

THE DUTIES
ON
LAND VALUES AND
MINERAL RIGHTS

UNDER
PART I. OF THE FINANCE (1909-10) ACT, 1910

BY
J. WYLIE
OF THE INNER TEMPLE, BARRISTER-AT-LAW

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THE DUTIES

ON

LAND VALUES AND MINERAL
RIGHTS

UNDER

PART I. OF THE FINANCE (1909-10) ACT, 1910

WITH INTRODUCTIONS, NOTES,

AND

APPENDICES CONTAINING THE REGULATIONS AND FORMS

ISSUED BY THE COMMISSIONERS OF

INLAND REVENUE

BY

J. WYLIE

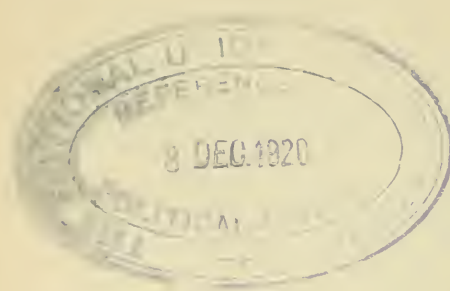
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PREFACE.

THE principles of the Duties on Land Values are so novel, and their application is so complicated by reason of the number and interaction of the duties imposed and the infinite variety of the interests affected, that there may perhaps be room for an attempt to set out, as shortly as possible, the general outline of Part I. of the new Finance Act, indicating a few of the difficulties which may arise, and suggesting (with diffidence) the answers to doubtful questions of interpretation, without for the present having the advantage of being able to refer to Cases decided directly upon the provisions of the Act. There are, of course, numerous Cases decided under other Acts which will in practice be

found to throw light upon many of the terms employed; these I have only touched upon by references to the Acts concerned, intending this book to be merely a preliminary survey of some very difficult and unexplored ground. Its main object is to give a general view of the Act, and of the duties imposed in their relation to each other, in the comments on each section referring to other sections which have to be borne in mind, and illustrating by simple instances what appears to be the effect of its provisions.

For purposes of clearness of exposition, I have thought it desirable to change the order of the sections of the Act, thereby avoiding a great number of references forward to terms and provisions which have not yet been explained. With this object I have dealt first with the provisions regulating the original Valuation which is to be made as on the 30th April, 1909, and

the provisions as to Appeal (Sections 26 to 34). I have then taken Section 25, which shows how the values to be found on that original Valuation are to be ascertained, the ground being thus prepared for the discussion of Increment Value Duty (Sections 1 to 12), Reversion Duty (Sections 13 to 15), Undeveloped Land Duty (Sections 16 to 19), and Mineral Rights Duty and the Provisions as to Minerals (Sections 20 to 24). The supplemental provisions, containing certain general exemptions and the definition clauses, will be found at the end (Sections 35 to 42). It is hoped that the convenience of having the events stated in the order of their happening may counterbalance any inconvenience caused by the sections being taken out of their numerical order.

The sections of most of the Acts referred to which appear to be relevant are set out in

full; but there will obviously be difficulties in deciding what sections, for instance, of The Finance Act, 1894, are in fact, applicable. In the Appendices will be found all the Regulations and Forms which have been issued at the time of going to press.

I am indebted to my friend Mr. A. J. L. SCOTT, of the Inner Temple, for much useful help in the reading of the proofs.

J. WYLIE.

4 ELM COURT, TEMPLE,
1st June, 1910.

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THE

FINANCE (1909-10) ACT, 1910.

[10 EDWARD VII., CHAPTER 8.]

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions.

[29th April, 1910.]

MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

CHAPTER I.

THE MACHINERY OF VALUATION AND APPEAL (SECTIONS 26 TO 34).

SUMMARY OF THE SECTIONS.

AS soon as may be after the passing of the Act, the Commissioners of Inland Revenue are to cause a valuation to be made of all land in the United Kingdom (Section 26, Sub-section (1)). This appears to include even Crown lands; and minerals, subject to special provisions applicable to them (see Sections 20 to 24), will be valued as separate parcels of land.

Three values are to be found: "total value," "site value," and (in the case of agricultural land (see Section 7), "value for agricultural purposes" where that value differs from the site value (Section 26, Sub-section (1)). The method of ascertaining "total value" and "site value" is prescribed in Section 25. No method is prescribed for ascertaining "value for agricultural purposes." See Chapter II., *infra*.

The unit of valuation is primarily a piece of land under separate occupation, but the owner may if he wishes have a further subdivision; and the date as on which the values are to be found is 30th April, 1909 (Section 26, Sub-section (1)).

In 1914, and in every subsequent fifth year, a periodical valuation of undeveloped land (which is defined in Section 16) is to be made, showing the "site value" as on the 30th April in each such year (Section 28). The same provisions are to apply for the purpose of this periodical valuation as apply for the purposes of the original valuation (Section 28). But nothing is said as to the ascertainment of "value for agricultural purposes" on these periodical valuations, though, as will be seen when "undeveloped land duty" is considered (Sections 16 to 19), it will be essential that such value should be known. It will presumably be left to the owner or person interested to establish the amount of such value whenever it is to his interest to do so.

For the purpose of these valuations, owners and persons receiving rent are to furnish such particulars as may be required and as it is in their power to give (Section 26, Sub-section (2)), and all persons who pay rent or receive rent as agents are to furnish the names and addresses of the persons to whom the rent is paid or on behalf of whom it is received (Section 31, Sub-section (1)). The Commissioners have power to authorise an inspection of, and report on, any land; and the person having custody or possession of the land is to permit such inspection (Section 31, Sub-section (2)).

The process will begin with the demand for and the furnishing of particulars, and the owner may if he wishes also furnish his own estimate of the "total" and "site" values (Section 26, Sub-section (3)),

and presumably, though it is not so stated, of the "value for agricultural purposes."

On these particulars and estimate, if any is furnished, the Commissioners will make a "provisional valuation." This they will serve on the "owner" (as defined in Section 41 and Section 27, Sub-section (7)); and any person interested may, on application, receive a copy (Section 27, Sub-section (5)).

If no objection is raised to this provisional valuation by the owner or any person interested, the values shown therein become the "original total value" and "original site value" for the purposes of the duties imposed by the Act (Section 27, Sub-section (1)).

If objection is raised notice thereof is to be given to the Commissioners. The Commissioners may thereupon amend the provisional valuation to the satisfaction of all objectors, and the values so amended become the "original values." The Commissioners may also amend the provisional valuation on their own motion and serve it again (Section 27, Sub-sections (2), (3), and (4)).

If the provisional valuation is not amended to the satisfaction of all objectors, then any objector unsatisfied may appeal; but if any duty becomes payable before the values are finally settled such duties are to be charged on the basis of the values contained in the provisional valuation, or the provisional valuation as amended to date, subject to adjustment of accounts when the values are finally settled (Section 27, Sub-section (6)).

The appeal is first to a referee appointed from a panel appointed in accordance with Section 34,

(Section 33, Sub-sections (2) and (3)), and from him to the High Court, or, in cases where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, to the County Court, with a further appeal to the Court of Appeal (Section 33, Sub-section (4)).

The matters on which appeal may be made appear, with a very few specified exceptions, to be every decision of the Commissioners on any point (Section 33, Sub-section (1)); but no person may appeal against the provisional valuation who has not duly made objection (Section 33, Sub-section (1) (a)); and values ascertained can only be questioned on appeal against their determination, and not on appeal against an assessment of duty (see Section 33, Sub-section (1) (b)).

The values having been ascertained, the duties may be assessed on such pieces of land, whether under separate occupation or not, as the Commissioners think fit (Section 29, Section (1)), and full powers are given to the Commissioners to make all necessary apportionments and re-apportionments of the values ascertained (Section 29, Sub-sections (2), (3), and (4)). The Commissioners are to keep a record, open to inspection by persons interested on payment of a small fee, of all valuations, apportionments, re-apportionments, assessments, and deductions, and of the amount of duty paid.

Provision is also made for determining the value of any consideration for a transfer or lease and the apportionment of such consideration (Section 32).

Valuation
of land for
purposes of
Act.

26. (1) The Commissioners shall, as soon as may be after the passing of this Act, cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land, and in the case of agricultural land the value of the land for agricultural purposes where that value is different from the site value. Each piece of land which is under separate occupation, and, if the owner so requires, any part of any land which is under separate occupation, shall be separately valued, and the value shall be estimated as on the thirtieth day of April, nineteen hundred and nine.

By The Interpretation Act, 1889 (52 & 53 Viet. c. 63), unless the contrary intention appears, words importing the masculine gender shall include females (Section 1, Sub-section (a)). and words in the singular shall include the plural (Section 1. Sub-section (b)); month means "calendar month"; land includes "messuages, tenements, and hereditaments, houses and buildings of any tenure" (Section 3); "High Court" and "Court of summary jurisdiction" are defined in Section 13; "Rules of Court" in Section 14; "person" includes any body of persons, corporate or unincorporate (Section 19); "financial year" means the twelve months ending the 31st day of March (Section 22, and see Section 20, Sub-section (1) of the present Act); "Lands Clauses Acts" is defined by Section 23; "service by post" is defined by Section 26; "commencement" of an Act means the time at which it comes into operation (Section 36, Sub-section (1)) and *cf.* The Acts of Parliament (Commencement) Act, 1793, by which the date endorsed is the date of the commencement when no other commencement is provided in the Act (as is the case in the present Act, so that the date of the commencement is 29th April, 1910).

The Commissioners, throughout this part of this Act, are the Commissioners of Inland Revenue (Section 96, Sub-section (2)).

After the Passing of this Act.—I.e. 29th April, 1910.

A Valuation.—This is referred to in Section 27 as the “provisional valuation”; after all objections and appeals have been disposed of the values so found become the “original” values.

Land.—See Interpretation Act, 1889, Section 3, quoted above. In the present Act the word does not include any incorporeal hereditament issuing or granted out of the land (Section 41). Subject to this limitation, “land” is to be interpreted in its widest sense, including everything under or above the surface; and presumably it must include land covered with water. It includes minerals (see Sections 20 to 24). All land will be valued, even though held in circumstances in which no duty is payable (*e.g.* by rating authorities (Section 35) or statutory companies (Section 38), and Crown land seems to be subject to valuation (see Section 10, Sub-section (1)). For the case of copyholds and customary freeholds see Section 40.

Total Value, Site Value.—For the meaning of these see Section 25.

Agricultural Land.—By Section 41 the expression “agriculture” “includes the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments; and the expression ‘agricultural land’ shall be construed accordingly.” Agricultural land is, therefore, land which is, in fact, used for agriculture as above defined (see Section 7, notes).

The Act contemplates two values as being simultaneously attributable to the land. Presumably, one will be based on the price which would be given for the land by a purchaser who intends to use it for its most profitable purpose; the other will be based on the price which would be given by a purchaser who only intends to use it for agriculture.

It must be borne in mind that it is to the interest of the taxpayer that the agricultural value should always be high, as such value is the basis not of taxation, but of exemption (see Section 7, and Section 17, Sub-section (2)); while as to site value a high value involves a lower increment value duty, but a higher undeveloped land duty.

Minerals must be valued as a separate parcel of land. See Section 23, Sub-section (2), and as to minerals generally see Sections 20 to 24.

Each Piece of Land which, &c.—The Commissioners' duty in the first place is to value each piece of land occupied by one person or body of persons; but the owner may, if he so desires, have any such piece split up for valuation purposes into as many units of valuation as he may desire. No provision is made as to any time within which the owner must give notice of his desire. It will be well to give such notice before or as soon as possible after service of the provisional valuation under Section 27, Sub-section (1).

The *owner* is defined in Section 41 as "the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired the lessee under the lease, or, if there are two or more such leases, the lessee under the last created underlease, shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid." In calculating the length of a lease "the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not, on its renewal, be deemed to be determined" (Section 41).

(2) Any owner of land and any person receiving rent in respect of any land shall, on being required by notice from the Commissioners, furnish to the Commissioners a return containing such particulars as the Commissioners may require as to the rent received by him, and as to the ownership, tenure, area, character, and use of the land, and the consideration given on any previous sale or lease

of the land, and any other matters which may properly be required for the purpose of the valuation of the land, and which it is in his power to give, and, if any owner of land or person receiving any rent in respect of the land is required by the Commissioners to make a return under this section, and fails to make such a return within the time, not being less than thirty days, specified in the notice requiring a return, he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

As to service of this notice see Section 31, Sub-section (4).

Any Owner, &c.—The persons who may be required to make the return are, it is to be noted, not merely the freeholder or leaseholder whose lease has more than fifty years to run (Section 41), but “any person receiving rent in respect of any land,” whatever the nature or length of his holding, or of the holding in respect of which the rent is received. In the word “owner” is also presumably included the “proprietor” of minerals (see Sections 20 and 21, and notes). The Crown is also probably included, for though the Crown pays no duty, it seems essential that Crown lands should be valued both for the future, when they may, by transfer, cease to be Crown lands, and for immediate purposes where subjects hold interests in Crown lands. See Section 10, Sub-section (1).

Any Previous Sale or Lease.—This, *semble*, includes all previous sales or leases, particulars of which may reasonably be required for the purpose of the valuation, and can reasonably be expected to be given.

For the particulars to be given by those who pay rent or receive rent as agents see Section 31, Sub-section (1).

Which it is in his Power to Give.—The person making the return will presumably have to give all information in his possession or in the possession of any person on his behalf.

Penalty.—*Cf.* Section 31, Sub-section (3), and note the omission in the present section of the word “wilfully.” See also Finance Act, 1894, Section 8, Sub-section (6). The words “not exceeding” give to the Commissioners or the Court a power to reduce the penalty similar to that expressly given by the above section of the Act of 1894.

(3) Any owner of land may, if he thinks fit, furnish to the Commissioners his estimate of the total value or site value or both of the land, and the Commissioners, in making their valuation, shall consider any estimate so furnished.

Total Value or Site Value.—For the method of arriving at these see Section 25. If it is desired to place a valuation before the Commissioners this should be done promptly and, if possible, before they make their provisional valuation provided for in Section 27. This will operate as notice to them of any probable difference of opinion, and may obviate the necessity for subsequent objection to the provisional valuation and for appeals. It will be advisable to give fully the basis of the valuation and the justification for it, as the document will be important as a statement of the owner's case (see Section 27, Sub-section (2)).

A proprietor of minerals which are not comprised in a mining lease or being worked need not make any return with regard to them, as their value in that case is treated as “nil” unless he cares to specify their nature and to furnish an estimate of their capital value (see Section 23, Sub-section (2)). But if they are subsequently sold or leased, the increment value duty then payable will be so much the greater if their value on the original valuation has been treated as “nil.”

Ascertain-
ment of the
original site
value of
land.

27. (1) The Commissioners shall cause a copy of their provisional valuation of any land to be served on the owner of the land, and, unless objection is taken to the provisional valuation in manner provided by this section, the values shown

in the provisional valuation shall be adopted as the original total value and the original site value respectively for the purposes of this Part of this Act.

The Owner of the Land.—For the meaning of “owner” see Section 41 and Section 26, Sub-section (1), note, *supra*, and Sub-section (7), *infra*. Any person interested in the land is also entitled, on application, to a copy of the provisional valuation, and may then make objection and appeal in the same manner as the owner (see Sub-section (5) of this section, *infra*).

Original Total Value, &c.—For the method of arriving at these values see Section 25 (Chapter II.). For the original site value of land held by a statutory company see Section 38, Sub-section (2).

In the case of minerals the values (if any) found on the original valuation will be an “original total value” and an “original capital value,” and they will be ascertained according to the provisions of Section 23, Sub-section (1), and not of Section 25.

In place of the “original site value,” found in accordance with this section and Section 25, a higher value may, for the purposes of increment value duty, be substituted when the land is shown to have depreciated in value within the past twenty years (see Section 2, Sub-section (3)).

For the case of copyholds see Section 40.

(2) If the owner considers that the total or site value, as stated in any provisional valuation, is not correct, he may, with a view to an amendment of the provisional valuation, within sixty days of the date on which the copy of the provisional valuation is served, or such extended time as the Commissioners may in any special case allow, give to the Commissioners notice of objection to the provisional valuation, stating the grounds of his objection and

the amendment he desires, and, if the Commissioners amend the provisional valuation so as to be satisfactory to all persons making objections, the total and site value as stated in the amended valuation shall be adopted as the original total and the original site value for the purposes of this Part of this Act.

Within Sixty Days, &c.—If the owner has already furnished his own estimate under Section 26, Sub-section (3), it will probably be sufficient to re-state that estimate with any amendments or grounds of objection which the provisional valuation has made necessary (see note to Section 26, Sub-section (3)). It is important that all deductions (see Section 25, Sub-section (4)), should be claimed at this point, for, in the case of increment value duty, a deduction which could be, but is not, claimed when the original site value is being ascertained cannot be claimed when the site value is being ascertained on any occasion on which duty becomes payable (Section 12). *Cf.* also Sub-section (4), note, *infra*.

In addition to the "owner" (in the extended meaning given by Sub-section (7), *infra*) any person interested who has applied for a copy of the provisional valuation has this right of objection and appeal (Sub-section (5), *infra*).

(3) The Commissioners may amend any provisional valuation, whether objected to or not, before it is finally settled, and the amended provisional valuation shall be deemed to be a provisional valuation for the purposes of this section.

Before it is Finally Settled.—Such amendment must, it would seem, be made by the Commissioners, if at all, before the expiration of the time during which the owner or person interested may give notice of objection, *i.e.* sixty days, or any extended time

applied for and allowed, or before the conclusion of proceedings by way of appeal. On the expiration of such time, if no notice of objection has been given, or when proceedings on appeal are concluded, the provisional valuation becomes final, and cannot be re-opened on either side.

Any amended provisional valuation, being "deemed to be a provisional valuation," must presumably be served again on the owner, and the time for objection apparently begins to run again from the date of such second service. But it is presumably only in the case of an amendment made by the Commissioners on their own motion that further "objection" can be taken. If the amendment is made in consequence of an objection, but without satisfying the objector, the proper step will then be to appeal.

(4) If the provisional valuation is not amended by the Commissioners so as to be satisfactory to any objector, that objector may give a notice of appeal under this Act with respect to the valuation, but, if no such notice is given, the total and site value as stated in the provisional valuation, subject to such amendments as may be made by the Commissioners in order to meet objections, shall be adopted as the original total and the original site value respectively for the purposes of this Part of this Act.

Any Objector.—This includes a person interested who has applied for a copy under Sub-section (5), *infra*.

Notice of Appeal.—The provisions as to appeal are contained in Sections 33 and 34, *infra*, and in rules to be made in accordance with those sections. There is no *locus standi* for appealing against a provisional valuation unless the appellant has duly made an objection (Section 33, Sub-section (1) (a)); and the original total and site values, and the site value as ascertained under any subsequent valuation, can only be questioned in an appeal against

the determination by the Commissioners of that value where there is an appeal under the Act, and cannot be questioned in an appeal against the assessment of duty (Section 33, Sub-section (1) (b)). The time for and manner of appeal will be regulated by the rules (Section 33, Sub-sections (1) and (5)); and the appeal is first to a referee and from the referee to the High Court, or to a County Court when the total or site value, as alleged by the Commissioners, of the property in respect of which the dispute arises does not exceed £500 (Section 33, Sub-section (4)).

(5) Any person interested in the land, not being an owner, may apply to the Commissioners for a copy of the provisional valuation of the land before it is finally settled, and shall then have the same right of giving notice of objection and of appealing as the owner.

Any Person Interested.—By Section 41 “the expression ‘interest’ in relation to land includes any undivided share in a fee simple in possession, and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy, or an incumbrance as defined by this Act, or any fixed charge as defined by this Act, or any purely incorporeal hereditament, or any leasehold interest under a lease for a term of years not exceeding fourteen years.”

By the same section “the expression ‘incumbrance’ includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act,” and “the expression ‘fixed charge’ means any rent-charge as defined by this Act, and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers, or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land”: and the expression “rent-charge” “means tithe or tithe rent-charge, or other periodical payment or rendering in lieu of

or in the nature of tithe, or any fee farm rent, rent seek, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land."

Person Interested seems, in most of the places in which the expression is used, to be limited by the above definition; but here it is treated as including an "owner." See Section 41, note to the definition of "interest."

Presumably the person interested has sixty days after receiving a copy of the provisional valuation in which to give notice of objection. He may apply for a copy before the valuation is finally settled, but there is no other limitation as to the time within which he must apply; consequently, if he waits till the last day of the period allowed to the owner, he can, it seems, defer the final settlement for at least another sixty days, and, if he appeals, for a considerably longer time, during which another person interested may follow his example. There thus seems to be an opportunity if there are many persons interested for causing considerable delay. But such delay will not affect the assessment of duty (see Sub-section (6), *infra*).

(6) Where the value to be adopted as the original total or the original site value of any land for the purposes of this Part of this Act has not been finally settled at the time when any duty under this Part of this Act becomes leviable, any duty under this Part of this Act shall be assessed as if the values as shown in the provisional valuation, or, if the provisional valuation has been amended by the Commissioners, as shown in the valuation as so amended, were the values adopted as the original total and site values for the purposes of this Part of this Act, and, on the values to be adopted being finally settled, if it is found that the amount which should have been

paid as duty exceeds that actually paid, the excess shall be deemed to be arrears of the duty, except so far as any penalty is incurred on account of arrears, and, if it is found that the amount which should have been paid as duty is less than that actually paid, the difference shall be repaid by the Commissioners.

At the time when any Duty becomes Leviable.—

For the times at which the duties are leviable see Sections 1, 13, 16, 19; Section 20, Sub-section (1); and Section 22, Sub-sections (3) and (5).

*If the Provisional Valuation has been Amended.—*See Sub-section (3), *supra*.

*Any Duty shall be Assessed.—*Though the words “and paid” are not used after “assessed” they seem to be implied from the remainder of the sub-section, the general effect being that an objection or appeal is not to operate like a stay of execution if, pending the final settlement, the time arrives for the payment of any duty. It would seem, therefore, that *e.g.* undeveloped land duty for the financial year ending 1st March, 1910, can be assessed at once on the basis of the provisional valuation (see Section 16, Sub-section (1), and Section 19), subject to ultimate adjustment of accounts.

(7) Where a lessee is the owner of the land within the meaning of this Act, this section shall apply as if any person entitled to the fee simple reversion or to a leasehold reversion for a term of years exceeding twenty-one were the owner as well as the lessee.

*Where a Lessee is the Owner.—*A lessee or underlessee is deemed to be the owner if his lease or underlease (being the last created lease) has more than fifty years to run (Section 41).

There may, therefore, be several persons entitled as "owners" to service of the provisional valuation and to make objection and appeal—the lessee in actual possession, if the residue of his lease exceeds fifty years; one or more intermediate lessors, if their reversions exceed twenty-one years; and the freeholder.

All these persons must be served with a copy of the provisional valuation. They are not in the position of "persons interested" and entitled only to a copy on application. The Act is silent as to the effect of omission to serve one of them; presumably the valuation as against him is not binding.

Lease.—For the provisions in respect to leases containing an obligation to renew, and leases for a life or lives, see Section 41 and Section 26, Sub-section (1), note, *supra*, p. 8.

28. For the purpose of obtaining a periodical valuation of undeveloped land the Commissioners shall, in the year nineteen hundred and fourteen and in every subsequent fifth year, cause a valuation to be made of undeveloped land showing the site value of the land as on the thirtieth day of April in that year, and, for the purpose of ascertaining the value at that time, the provisions of this Act as to the ascertainment of value shall apply for the purpose of ascertaining value on any such periodical valuation as they apply for the purpose of ascertaining the original value

Periodical
valuation of
undeveloped
land.

Provided that if on any such periodical valuation the valuation of any undeveloped land which is liable to undeveloped land duty is for any reason begun but not completed in the year of valuation.

the Commissioners may complete the valuation after the expiration of the year of valuation, subject to an appeal under this Act.

Periodical Valuation.—Undeveloped land duty is charged for every financial year on the basis of the site value (Section 16, Sub-section (1)). For the first five years it will be charged on the basis of the original site value as ascertained under Sections 26 and 27 (Section 16, Section (3)). Subsequent changes in that value will be ascertained and registered by quinquennial valuations of undeveloped land only, each of such valuations being conducted in accordance with the provisions already set out.

Undeveloped Land.—By Section 16, Sub-section (2), land is deemed to be undeveloped “if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses) or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture.” There are certain provisos and exceptions which are dealt with later (see Sections 16 to 19, *infra*), but these do not affect the duty of the Commissioners to cause a valuation to be made.

Provided that if, &c.—By Section 19, undeveloped land duty is to be assessed by the Commissioners, and is payable at any time after the first day of January of the year for which the duty is charged, and provision is made for the assessment of duty after the year for which it is charged if for any reason it cannot be assessed within the year.

It is to be noted that the present proviso, which deals with the valuation of the land, is expressly confined to the case of land which is liable to the duty.

Assessment
of duty on
separate
parcels of
land and
apportion-
ment of
valuation.

29. (1) Any duty under this Part of this Act may be assessed on or in respect of any such pieces of land whether under separate occupation or not, as the Commissioners think fit.

Any Duty, &c.—It has already been provided (Section 26, Sub-section (1)) that the unit of valuation is a piece of land under

separate occupation, unless the owner desires a further subdivision, in which case he is entitled to have any part of any land under separate occupation separately valued. The present sub-section gives the Commissioners in wide terms a free hand as to the assessment of the duty. There is not any corresponding unit of assessment. This is, of course, necessary, because a sale, for instance, on which increment value duty becomes payable may include a part only of a piece which has been separately valued, or any number of such pieces, and it may be necessary to join together the site values of various pieces and to apportion the site value of one or more of them (see next sub-section; *cf.* also Section 3, Sub-section (1), which deals with the corresponding apportionments, for purpose of increment value duty, of duty already paid).

The decision of the Commissioners is subject to appeal (Section 33, Sub-section (1)).

(2) The Commissioners shall make such apportionments and re-apportionments of any original site value or any site value fixed on a periodical valuation as they consider necessary for the purpose of the collection or assessment of increment value duty or undeveloped land duty, or which they may be required at any time to make on the application of any person entitled to the fee simple of any land or to an interest in any land.

On any such apportionment or re-apportionment for the purpose of the collection of increment value duty on the occasion of the transfer on sale of the fee simple of the land or any interest in the land, or on the occasion of the grant of any lease of the land, the consideration for the transfer, or for the grant of the lease, shall be

treated as one of the matters to which regard must be had in making the apportionment or re-apportionment.

See note to Sub-section (1), *supra*.

Original Site Value, Site Value Fixed on a Periodical Valuation.—See Section 27, Sub-section (1), and Section 28.

Fee Simple, Interest.—See Section 41.

Increment Value Duty, Occasion, &c.—See Sections 1 and 2.

Consideration.—See Section 2, Sub-section (2), and Section 32. If, for instance, the unit of valuation on the original valuation under Sections 26 and 27 was two acres, and the original site value was ascertained to be £200, and subsequently one acre is sold or leased on terms which show a site value of £150, it becomes necessary to ascertain how much of the original site value was attributable to the acre now sold or leased, and the consideration for the sale or lease is an important element to be taken into account in deciding this point.

The decision of the Commissioners is subject to appeal (Section 33, Sub-section (1)).

(3) The provisions relating to the procedure on the valuation of land for the purposes of this Part of this Act shall apply with respect to the apportionment or re-apportionment of site value under this section as they apply with reference to the ascertainment of the original site value of land.

The Commissioners will serve a copy of the apportionment upon the owner, who may put in his objection and, if not satisfied, appeal. The owner may also furnish his own apportionment in the same way as he furnishes his estimate of value. See Sections 26 and 27.

(4) The value attributed on any such apportionment or re-apportionment to each part of the land shall, for the purposes of this Part of this Act, be treated as the original site value or the site value of the land, as the case may be.

See Sub-section (2), *supra*.

30. (1) The Commissioners shall record particulars of all valuations, apportionments, re-apportionments, and assessments made by them under this Part of this Act, and of any deductions allowed in determining any value, and of the amount of any duty paid under this Part of this Act in respect of any land.

Duties of Commissioners as to keeping records and giving information

(2) The Commissioners shall furnish to any person interested in any land, or to any person authorised by any person so interested, on his application and on payment of such fee, not exceeding two shillings and sixpence, as the Commissioners may fix with the approval of the Treasury, copies of any particulars so recorded by them relating to the land, certified, if required, by a Secretary or Assistant Secretary to the Commissioners.

Person Interested.—See Section 27. Sub-section (5), note; and Section 41.

31. (1) Every person who pays rent in respect of any land, and every person who as agent for another person receives any rent in respect of any

Information as to names of owners of land.

land, shall, on being required by the Commissioners, furnish to them within thirty days the name and address of the person to whom he pays rent or on behalf of whom he receives rent, as the case may be.

Rent.—See Section 26, Sub-section (2), note, and Section 41. Rent has the same meaning as in The Conveyancing and Law of Property Act, 1881, and does not include a rent-charge (Section 41). By the said Act (Section 2, Sub-section (ix.)), rent is defined as including “yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise.” For the meaning of the word in the case of minerals see Section 24. The receiver of rent on his own behalf must furnish the necessary information under Section 26, Sub-section (2).

(2) For the purpose of the exercise of their powers or the performance of their duties under this Part of this Act in reference to the valuation of land, the Commissioners may give any general or special authority to any person to inspect any land and report to them the value thereof, and the person having the custody or possession of that land shall permit the person so authorised, on production of the authority of the Commissioners in that behalf, to inspect it at such reasonable times as the Commissioners consider necessary.

Cf. The Finance Act, 1894, Section 7, Sub-section (8), summarised in Section 5, note, *infra*.

(3) If any person wilfully fails to comply with the provisions of this section, he shall be liable to a penalty not exceeding fifty pounds to be recoverable in the High Court.

Cf. Section 26, Sub-section (2), and The Finance Act, 1894, Section 8, Sub-section (6). The words "not exceeding" give to the Commissioners a power to reduce the penalty similar to that expressly given by the above section of the Act of 1894.

(4) Any notice requiring a return for the purpose of valuation, any copy of a provisional valuation, and any other notice or document which is required to be given or sent to an owner or a person interested in land under this Part of this Act by the Commissioners shall be sufficiently given or sent if sent by post to the address of the owner or person interested furnished to the Commissioners under the powers given by this section, or, if the address cannot be so ascertained, by leaving the notice or a copy of the document addressed to the owner or person interested with some occupier of the land, or, if there is no occupier, by causing it to be put up in some conspicuous place on the land.

Cf. The Interpretation Act, 1889 (52 & 53 Vict. c. 63). Section 26: "Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

32. (1) Where the value of any consideration for a transfer or lease is to be determined for the purposes of this Part of this Act, that value

Determina-
tion of
value of
considera-
tion.

shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment.

This provision has reference to the calculation of the site value of land on the occasions on which increment value duty is to be collected (Section 2); the calculation of total value for purposes of reversion duty (Section 13, Sub-section (2)); and the making of apportionments (Section 29, Sub-section (2)).

As Appears to the Commissioners—An appeal lies from the decision of the Commissioners under the words of Section 33, Sub-section (1), which give a right of appeal “against . . . any assessment or apportionment of the consideration on any transfer or lease.”

(2) If the Commissioners are satisfied that any covenant or undertaking or liability to discharge any incumbrance, or, in cases where a nominal rent only has been reserved, any covenant or undertaking to erect buildings, or to expend any sums upon the property, has formed part of the consideration, the Commissioners shall allow such sum as they think just in respect thereof as an addition to the value of the consideration.

Incumbrance.—This includes “a mortgage in fee or for a less estate, and a trust for securing money, and a lien and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act” (Section 41); the expression “fixed charge” meaning “any rent-charge as defined

by this Act (*i.e.* "tithe or tithe rent-charge or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seek, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land"), and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land" (Section 41).

The distinction will be noted between "includes" and "means." A fixed charge and a rent-charge are "defined" in the sense of being limited to the charges specified; an incumbrance is not so defined, but is to be interpreted in its widest meaning subject to the limitation specified.

A Nominal Rent.—The decision of the Commissioners as to what is nominal will be subject to appeal (see Section 33, Sub-section (1), and Section 9, note). If the rent is in any degree higher than nominal no addition will be made in respect of any covenants to erect buildings or to spend money upon the premises.

If the Commissioners are Satisfied, &c.—An appeal lies from the decision of the Commissioners under Section 33, Sub-section (1). See note to last sub-section.

(3) Where it is necessary to apportion any consideration for the purposes of this Part of this Act as between properties included in any transfer or lease, the consideration shall be apportioned by the Commissioners in such manner as they determine.

Apportionment.—*Cf.* Section 29, Sub-section (2), *supra*.

In such Manner, &c.—The determination of the Commissioners is subject to appeal under Section 33, Sub-section (1). See note to Section 32, Sub-section (1), *supra*.

Appeals.

Appeals to
referees.

33. (1) Except as expressly provided in this Part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the first or any subsequent determination by the Commissioners of the total value or site value of any land; or against the amount of any assessment of duty under this Part of this Act; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of this Act; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

- (a) An appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act; and
- (b) The original total value and the original site value and the site value as ascertained

under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

Except as Expressly Provided.—The exceptions occur in Section 17, Sub-section (3), in which the opinion of the Commissioners on the questions whether the access granted to woodlands, &c., is of public benefit, whether it is reasonably necessary in the interests of the public that land be kept free from buildings, and whether it is probable that land will continue to be used for games or recreation, is expressly declared to be final. By Section 25, Sub-section (3), on the question of the desirability of a restrictive covenant there is an appeal to a referee, but his decision is final.

Person Aggrieved—This must presumably be any owner or person interested (*semble*, holding an interest within the definition contained in Section 41) whose interests are or can be adversely affected by the decision in question. The decision of the referee may affect adversely the interests of persons other than those who were affected by the decision of the Commissioners. Presumably (as the result of Sub-section (4), *infra*) persons who would not have appealed against the decision of the Commissioners may appeal against the decision of the referee (but see note to Sub-section (4)). If one person interested fails to obtain a decision of the referee or of the Court in his favour, there does not seem to be anything to prevent another person interested from prosecuting an appeal on the same point, except that the previous decision will be binding unless he is prepared to carry the appeal through to a higher Court.

Rules.—To be made by the Reference Committee, subject to the approval of the Treasury (see Sub-section 5, *infra*). At the time of writing no such Rules have been issued.

Against the First or any Subsequent Determination, &c.—See Section 2, Sub-sections (2) and (3); Section 13, Sub-section (2);

Section 16, Sub-section (3); Section 22; Section 23, Sub-sections (1) and (2); and Sections 25, 26, 27, and 28.

Against the Amount of any Assessment of Duty.—See Section 3, Sub-section 1; Sections 4, 5, 6, 13, 15, 16, 19; and Section 20, Sub-section (4).

Against a Refusal to make any Allowance, &c.—See Section 2; Section 3, Sub-section (5); Section 12; Section 13, Sub-section (2); Section 14, Sub-section (3); Section 16, Sub-section (2) (b); Section 17; Section 22, Sub-sections (4) and (6); and Section 25, Sub-section (4).

Against any Apportionment.—See Section 3, Sub-section (1); Section 29, Sub-section (2); and Section 32, Sub-section (3).

Against the Determination of any Other Matter.—"Determination" clearly means any decision whether described as a "determination" or not (see Section 9, note, Chapter III.); and the effect of these words seems to be that every decision of the Commissioners (except those referred to in the note "except as expressly provided," *supra*) is subject to appeal. Many points will come under two or more of the categories above specified; the refusal of an allowance, for instance, may be also appealable as part of the determination of a value or assessment of a duty; and wherever there is any doubt about any particular decision it will apparently be covered by the final words.

Provided that, &c.—See Section 27, Sub-section (4).

(2) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section, and the decision of the referee to whom the matter is so referred shall be given in the form provided by rules under this section and shall, subject to appeal to the Court under this section, be final.

Rules.—See note to Sub-section (1), *supra*.

(3) The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant, or any persons nominated by the Commissioners and the appellant respectively for this purpose, and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant.

Any order of the referee as to expenses may be made a rule of the High Court.

The appeal contemplated is apparently of an informal nature, but the parties clearly may appear by counsel or solieitors.

Expenses Incurred.—The words are wide enough to cover all reasonable expenses, in addition to legal costs, which the appellant has incurred in preparing his own valuation and estimate under Section 26, Sub-section (3). What the word “such” means in “any such expenses incurred by the Commissioners” is doubtful as the only “expenses” to which it could refer have not been defined; but presumably the referee will, at his discretion, charge the unsuccessful appellant with (in addition to legal costs) any extra expense caused by the appeal over and above the expense of the original valuation.

Rule of the High Court.—*Cf.* Arbitration Act, 1889, Section 12, and the notes thereon in the Annual Practice, 1910, Vol. II., p. 689.

(4) Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court (including conditions enabling the Court to require the payment of or the giving of security for any

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c. 30.

duty claimed); and sub-sections two, three, and four of section ten of The Finance Act, 1894, shall apply with reference to any such appeal:

Provided that where the total or site value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed five hundred pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court, and in every such case any party shall have a right of appeal to the Court of Appeal.

Any Person Aggrieved.—*Semble*, whether he appealed against the original decision of the Commissioners or not. But the point is not clear, for no appeal lies against a provisional valuation except on the part of a person who has duly made objection (Section 33, Sub-section (1), Proviso (a)), which seems, in the case of appeals against the provisional valuation, to debar any person who had no objection to the provisional valuation from any remedy, if it is subsequently amended by the referee against his interest after the period within which he may make objection has expired (*cf.* Section 27, Sub-sections (1) and (5)).

Rules of Court.—These will be distinct from the rules to be made under Sub-section (5), *infra*. At the time of writing none have been issued.

Security.—*Cf.* the provision for security in the rules issued under Section 4, Sub-section (5), and set out in Appendix A.

The sub-sections of The Finance Act, 1894, are as follows:—

10. (2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

- (3) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.
- (4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners, or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

The application under this last section will be made by summons in chambers.

County Court.—Presumably, rules will also be issued regulating such appeals.

(5) Provision shall be made by rules under this section with respect to the time within which and the manner in which an appeal may be made to a referee under this section, and with respect to the mode in which the referee to whom any reference is to be made is to be selected, and with respect to the form in which any decision of a referee is to be given, and with respect to any other matter for which it appears necessary or expedient to provide in order to carry this section into effect.

Those rules shall be made by the Reference Committee, subject to the approval of the Treasury.

The Reference Committee for England shall consist of the Lord Chief Justice of England, the Master of the Rolls, and the President of the Surveyors' Institution.

The Reference Committee for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk, and the Chairman of the Scottish Committee of the Surveyors' Institution.

The Reference Committee for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland, and the President of the Surveyors' Institution.

The President of the Surveyors' Institution may, if he thinks fit, appoint any person, being a member of the council of that institution and having special knowledge of valuation in Ireland, to act in his place as a member of the Reference Committee in Ireland.

Appoint-
ment of
referees
hear
appeals.

34. (1) Such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution, or other persons having experience in the valuation of land as may be appointed for England, Scotland, and Ireland, respectively, by the Reference Committee, shall form a panel of

persons to act as referees for the purposes of this Part of this Act in England, Scotland, and Ireland, respectively, and persons having experience in the valuation of minerals shall be included in each panel.

(2) There shall be paid out of moneys provided by Parliament to every referee appointed under this section such fees or remuneration as the Treasury direct.



CHAPTER II.

THE GENERAL METHOD OF VALUATION (SECTION 25).

SUMMARY OF THE SECTION.

ON the original general valuation (Section 26) “total value” and “site value,” and on the periodical valuation of undeveloped land “site value,” are the values required, these being the values on the basis of which taxation is imposed, except in the case of minerals, for which see Sections 20 to 24 (Chapter VI., *infra*). In the process and for the purpose of ascertaining these, two other values are ascertained: “gross value” and “full site value.” This process is described in detail in the note to Section 25, Sub-section (1), p. 37, *infra*; it may be summarised briefly as follows:—First, there is to be found the amount which might be expected to be realised in the open market for the fee simple of the land as it stands (*i.e.* with everything upon it), but free from incumbrances, burdens, charges, or restrictions, other than rates or taxes (Section 25, Sub-section (1)). That is called the “gross value.” From this gross

value is then to be deducted the amount by which such value would be diminished if the land were sold subject to any fixed charges, public rights of way or user, rights of common, easements, and restrictive covenants entered into before 30th April, 1909, or (if entered into on or after that date) approved by the Commissioners, the amount so found being the "total value" (Section 25, Sub-section (3)). From this total value is next to be deducted, first, the amount which represents the difference (if any) between the gross value and the value which the fee simple might be expected to realise if the land were divested of all buildings, structures on, in, or under the surface which are appurtenant to or used in connection with such buildings, and all growing things (Section 25, Sub-section (2)). (This amount is, by Section 25, Sub-section (2), to be deducted from gross value for the purpose of ascertaining "full site value"; but it is such amount, and not "full site value," which is the material element of that sub-section.) Further, there must be deducted from the total value various amounts specified in Section 25, Sub-section (4) (b), (c), (d), and (e), the general effect of which is to reduce the "total value" by such parts of that value as are directly attributable to the work and expenditure of owners and persons interested in the land, and by the amount which it would be necessary to expend in order to divest the land of buildings, &c. The result is the "assessable site value" or "site value."

Wherever "site value" is mentioned in the Act the value as so ascertained is referred to, except in

the case of site value on an occasion on which increment value duty is to be collected (Section 2, Sub-section (2)). In that case, though the deductions are the same as those made from "total value," the value from which the amounts are deducted is differently ascertained (Section 25, Sub-section (4)). See "Increment Value Duty," Chapter III., *infra*.

For the ascertainment of "value for agricultural purposes," which, by Section 26, Sub-section (1), *supra*, p. 6, is to be shown separately in the case of agricultural land where it is different from the site value, no rules are laid down. This value is only required for the purpose of establishing claims to exemption (Section 7, and Section 17, Sub-section (2)), and the higher that value is, the greater the scope of the exemption. It would seem that such value should be ascertained in a way similar to that by which "total value" is ascertained and without any of the deductions referred to in Section 25, Sub-section (4).

The provisions of this section do not apply to the valuation of minerals (Section 25, Sub-section (5)), for which see Chapter VI., *infra*.

Valuation for Purposes of Duties on Land Values.

25. (1) For the purposes of this Part of this Act, the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes) might be expected to realise.

Definition
of values
of land.

General Summary of the Section.—Four values are for purposes of calculation adopted by the Act in this section, which may be summarised as follows:—

- A. *Gross Value*, i.e. the value of the fee simple of the land as it stands free from incumbrances, burdens, charges, or restrictions, if sold at the time of the valuation in the open market by a willing seller.
- B. *Full Site Value*.—To obtain this, assume that the land is divested of all buildings and structures (including fixed or attached machinery) on, in, or under the surface appurtenant to or used in connection with buildings, and all growing timber, fruit trees, fruit bushes, and other growing things. Estimate the value of the fee simple of the land if sold in the open market by a willing seller in this condition, find the difference between this value and the gross value A, and then deduct the difference so found from the gross value A, the result being the “full site value.”
- C. *Total Value*.—To obtain this, estimate what the fee simple of the land might be expected to realise if sold at the time in the open market by a willing seller, with all buildings, &c., as it stands, subject to any fixed charges, public rights of way or user, rights of common and easements, and restrictive covenants or agreements affecting the land (with regard to such covenants or agreements taking into account all such which were entered into before 30th April, 1909, and all such which,

having been entered into on or since that date, have been approved by the Commissioners under Sub-section (3) : deduct the value so found from the gross value A, thus ascertaining the amount by which the gross value A would be diminished ; and then deduct this last amount from the gross value A, thus obtaining the "total value."

- D. *Assessable Site Value* or *Site Value* (the expressions are interchangeable, except when "site value" on an occasion on which increment value duty is to be collected is referred to ; on such occasions, though the deductions now to be referred to are the same, the value from which the deductions are made is different (*cf.* Section 2)). To obtain this, take the "total value" C, ascertained as above, deduct all value which is attributable to any buildings and any structures (including fixed or attached machinery) on, in, or under the surface which are appurtenant to or used in connection with any such buildings, and to growing timber, fruit trees, fruit bushes, and other things growing on the land ; deduct further any value directly attributable to works or capital expenditure executed or incurred by the owner for the purpose of improving the land as building land, or for any business, trade, or industry other than agriculture ; deduct further any value directly attributable to the appropriation or gift of any land by any person interested in the land for streets, roads, paths, gardens, or other public open spaces ; deduct further any value directly attributable to expenditure on the redemption of any land tax or fixed charge, or on the enfranchisement of any copyhold or customary freeholds, or on the release of restrictive covenants which may be taken into account under C above, or to goodwill or matter personal to the owner ; deduct finally any sum necessary in order to divest the land of buildings, &c., and the result is the "assessable site value."

"Land" includes, in general, minerals ; but if there are minerals on or under the land they are to be treated as a separate parcel of land (Section 23, Sub-section (2)), and dealt with not under the present section, but under Section 23. For the present purpose, therefore, they may be disregarded, except, perhaps, in so far as

their presence may depreciate the surface value of the land (see Sub-section (5), *infra*, and, generally, the provisions as to minerals, Chapter VI.).

The Amount.—This seems clearly to be the gross amount which would be paid by the purchaser, without any deduction for expenses and costs of the seller.

Fee Simple.—By Section 41 the expression “fee simple” means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession.

In the case of copyholds of inheritance and copyholds held for a life or lives or for years, where the tenant has a right of renewal, and customary freeholds, references to the fee simple are to be treated as references to the whole copyhold or customary interest or estate, and total and site values are to be ascertained as if the land were freehold, subject to a deduction of the amount which it would cost to enfranchise the land; and in the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, the land is to be treated as if it were freehold land, and as if the copyhold interest were a leasehold interest (Section 40).

At the time.—*I.e.* at the time as on which the valuation is to be made (*cf.*, for instance, Section 26, Sub-section (1), by which the original valuation is to be as on 30th April, 1909). See next note.

In the Open Market.—*Cf.* the similar use of the term in The Finance Act, 1894 (Section 7, Sub-section (5)). The principles to be applied will probably be in a large measure those already familiar in the valuation of land for rating purposes, with the difference that in the present case it is the capital value and not the annual value which is to be found. The price which each given unit of land might be expected to realise will, it seems, be calculated only on the basis of that particular unit coming at that time into the market, though not, of course, on the basis of its being the only available piece of land. A normal state of affairs must be assumed, in which the owner, being under no compulsion, comes forward to sell the land but will not sell it unless he can get the price then customary in the neighbourhood. It has been suggested, but not with any sound reason, that a universal valuation such as is contemplated by the

Act involves the assumption that all the land valued has come into the market at once, with a consequent enormous depreciation of all values. Applied to the whole of the land in the country, this is not an argument which is likely to be admitted, nor does it even hold good with regard to the whole of the land of any particular owner. In Section 60, Sub-section (2), which deals with the method of arriving at principal value under Section 7, Sub-section (5), of The Finance Act, 1894, for purposes of estate duty (a method which is adopted for ascertaining site value on the occasion of death in the present Act (Section 2, Sub-section (2) (c)), a reduction on the assumption that the whole property is to be placed on the market at once is expressly negatived.

It is to be noted that each piece of land under separate occupation is to be separately valued, and the owner may insist upon a further subdivision (Section 26, Sub-section (1), p. 6, *supra*); and the Commissioners are to apportion and re-apportion site value either on their own initiative or on the application of any person interested (Section 29, Sub-section (2), p. 19, *supra*).

In its then Condition.—I.e. with all buildings, &c. (referred to in Sub-section (2), *infra*) on it.

Free from Incumbrances.—By Section 41 “incumbrance includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien and a charge of a portion, annuity, or any capital or annual sum,” but does not include a “fixed charge” as defined by that section.

The “gross value” ascertained under this sub-section is not applied anywhere for purposes of taxation, being merely the first step towards the ascertainment of “total value” and “site value.”

(2) The full site value of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to

realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon.

Gross Value, Fee Simple, Open Market.—See notes to Sub-section (1), *supra*.

As in the case of gross value, “full site value” is not applied for purposes of taxation; it merely supplies, for purposes of calculation, one of the amounts which are to be deducted from “total value” when “site value” is being ascertained (see Sub-section (4) (a), *infra*). This is apparently the explanation of the somewhat involved method of expression employed. It is also to be noted that the use of the words “the difference between that value and the value, &c.,” provides for the possibility of the value of the land being higher without the buildings than with them.

Any Buildings and any other Structures, &c.—It is to be noted that only structures appurtenant to or used in connection with buildings are referred to, so that if there is nothing on the land which can be called a building, then any “structures” on the land are not to be deemed to be removed. “Any” presumably means “all”: *cf.* “all growing timber, &c.”

(3) The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights of way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement

restricting the use of the land entered into or made before the thirtieth day of April nineteen hundred and nine, and to any covenant or agreement restricting the use of the land entered into or made on or after that date, if, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be subject to an appeal to the referee, whose decision shall be final.

See Sub-section (1), note, *supra*.

Total Value, unlike gross value and full site value, is used as a basis for taxation, being the basis of the assessment of the reversion duty (Section 13, Sub-section (2)) ; and by Section 26, Sub-section (1), it is to be shown separately in the original valuation of all land made by the Commissioners after the passing of the Act. See also Section 8, Sub-section (2), and Section 18.

Sold.—This presumably means “sold in the open market by a willing seller in its then condition.” See Sub-section (1), note, *supra*.

Fixed Charges.—As defined in Section 41, a fixed charge means “any rent-charge (*i.e.* tithe or tithe rent-charge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land), and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers, or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land.”

Covenant or Agreement includes a covenant or agreement whether express or implied. A clear distinction is drawn between covenants or agreements entered into before and those entered into after the introduction of the resolutions on which the Bill was based. Those entered into before that date are always to be taken into account. With regard to those entered into after that date, the Commissioners are given a discretion to disregard them unless they are "desirable in the interest of the public or in view of the character and surroundings of the neighbourhood."

Desirable in the Interests of the Public, &c.—Cf. Section 17, Sub-section (3) (c). These words give to the Commissioners and the referee a wide discretion, for the exercise of which it would be difficult to lay down any rules in advance. It is to be noted that the date of the imposition of the restraint is the date, and the only date, which is to be considered in deciding upon its desirability. Such a restraint, desirable in the public interest at first, may become in course of time a serious hindrance to the development of the locality, but the deduction is not for that reason to be disallowed.

If in the Opinion of the Commissioners, &c.—The opinion will presumably be expressed at the time of the making of the valuation in respect of which the question arises. No provision is made for obtaining the opinion from them before the covenant or agreement is entered into, and, until the general principles on which the Commissioners act are known, there will be considerable uncertainty as to whether any particular covenant will or will not be approved. It is difficult to see how they can offer binding opinions on hypothetical cases which could only be given after full local inquiry, and caution will, in future, have to be exercised when any such covenant or agreement is contemplated. It is not likely that the power of appealing to the referee will result in the creation of any body of binding decided cases, and by its very nature the question, depending as it does on local facts and circumstances, is not susceptible of regulation by general rules.

Subject to an Appeal to the Referee, &c.—See Section 33, p. 26. The hearing before a referee is apparently to be informal in character; he determines the matter "in consultation with the Commissioners and the appellant," or any persons nominated by the parties for the purpose. All other decisions of the Commissioners under this section appear to be subject to appeal without any restriction (Section 33, Sub-section 1, and Section 9, note).

(4) The assessable site value of land means the total value after deducting—

- (a) The same amount as is to be deducted for the purpose of arriving at full site value from gross value; and

The Assessable Site Value, or “site value” (see last paragraph of the present section), as ascertained in this sub-section, is the basis for the assessment of increment value duty (Section 2) and undeveloped land duty (Section 16, Sub-section (1)).

For the case of copyholds see Section 40.

For the case of statutory companies see Section 38, Sub-section (2).

In the case of minerals a “capital value,” specially ascertained, is adopted in the place of “site value.” See Section 23.

Appeals.—See Section 33, Sub-section (1), and Section 9, note.

The Same Amount as is to be Deducted, &c.—See Section 25, Sub-sections (1) and (2), notes.

- (b) Any part of the total value which is proved to the Commissioners to be directly attributable to works executed, or expenditure of a capital nature (including any expenses of advertisement) incurred *bonâ fide* by or on behalf of or solely in the interests of any person interested in the land for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture; and

Proved to the Commissioners.—Subject to appeal (Section 33, Sub-section (1)).

Directly Attributable to.—Cf. similar words used in providing for a deduction from “the benefit accruing to the lessor” in relation to reversion duty (Section 13, Sub-section (2)). It is to be noted that the word “directly” does not appear in that section, an omission which leaves to the Commissioners a wider discretion than in the present case.

Works Executed.—This includes works of whatever kind, whether permanent or temporary in character. The works and expenditure need not be upon the land in question. The actual cost of the works or actual amount of expenditure is not the criterion of the amount to be deducted, but the value directly attributable thereto, which may be greater or less.

Expenditure of a Capital Nature, &c.—Cf. The Education Act, 1902. Section 18, Sub-section (1). It is a question of accounting to decide what expenditure comes under this head. Legal expenses are probably included if they are of a kind which an auditor in the ordinary course would put to capital account. Whether land can ever be held to be improved by legal expenses, beyond the bare amount, at the most, of such expenses, is very doubtful; and the point does not seem likely to be one of much importance. More difficult will be the question how much of the value of land is directly attributable to expenses of advertisement, and what is to be included in the word “advertisement” for this purpose. The question is one of fact to be decided on the circumstances of each case.

Any Person Interested in the Land.—This means any person interested at the time of the execution of the works or the expenditure. There is no limit with regard to the time at which such works or expenditure may have been executed or incurred.

As to the meaning of “interested” see Section 41, and Section 27, Sub-section (5), note. “Person interested” in the present case includes, of course, the owner.

Bona fide.—Cf. Section 16, Sub-section (2).

For the Purpose of Improving, &c.—If read strictly this would seem to exclude works and expenditure executed or incurred without any thought of the land in question, but actually resulting in an increase in its value; but cases in which such a question could arise are likely to be rare.

As Building Land, &c.—If work or expenditure whose purpose was to improve the value of the land for agriculture has actually

improved its value as building land, &c., such work or expenditure may be taken into account for the purpose of the deduction under this sub-section (see last paragraph but one of this section).

Business, Trade, or Industry.—Cf. Section 16, Sub-section (2).

Agriculture.—As defined in Section 41. See for the position of agricultural land generally Section 7, note. No deduction is necessary or will be desired by the taxpayer in respect of improvements which increase agricultural value, as it is throughout in his interest that this value should be as high as possible; no increment value duty being payable while the agricultural value is the highest value the land has (Section 7), and undeveloped land duty being payable only on the amount by which the site value exceeds the agricultural value (Section 17, Sub-section (2)).

- (c) Any part of the total value which is proved to the Commissioners to be directly attributable to the appropriation of any land or to the gift of any land by any person interested in the land for the purpose of streets, roads, paths, squares, gardens, or other open spaces for the use of the public; and

Proved to the Commissioners, Directly Attributable, Person Interested.—See notes to last sub-section.

The Appropriation of any Land.—As in the preceding sub-section, there is no limit of time, so that appropriation, &c., by a predecessor in title of the present owner is included.

Streets, Roads, Paths, &c.—Streets and roads—and it may be, in some cases, paths, squares, and gardens—are “works” within the meaning of Paragraph (b), and deduction is, therefore, already provided for in respect of the value attributable to the “works” so executed. The present sub-section must, therefore, be taken to provide for a further deduction of the value attributable to the appropriation or gift of the land for the purpose.

Squares, Gardens.—These words seem clearly governed by the words “for the use of the public.” Squares and gardens for the

use of the inhabitants of adjacent houses only are therefore not included, excepting so far as they can be brought under Sub-section (b), *supra*. For the position of such squares and gardens in relation to undeveloped land duty see Section 17, Sub-sections (3) (c) and (4).

- (d) Any part of the total value which is proved to the Commissioners to be directly attributable to the expenditure of money on the redemption of any land tax, or any fixed charge, or on the enfranchisement of copyhold land or customary freeholds, or on effecting the release of any covenant or agreement restricting the use of land which may be taken into account in ascertaining the total value of the land, or to goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land; and

Proved to the Commissioners, Directly Attributable.—See notes to Paragraph (b), *supra*.

Note that in this case the words “by . . . any person interested in the land” are omitted. It does not, therefore, matter by whom the expenditure was incurred.

Fixed Charge.—As defined in Section 41; and see Section 25, Sub-section (3), note.

Covenants or Agreements, &c.—Such covenants are those entered into or made before 30th April, 1909, and those made or entered into after that date of which the Commissioners have approved on the grounds specified in Section 25, Sub-section (3), *supra*.

Goodwill, &c.—This word seems to be governed by the following words, and only goodwill which is personal to the

owner, &c., seems to be contemplated as giving rise to a deduction, not goodwill which is due to situation, though it will usually be difficult to dissociate the two.

Owner, Occupier, or other Person Interested.—For “owner” and “person interested” see Section 41; “occupier” brings in for the present purpose a lessee for a term of years not exceeding fourteen who does not hold an “interest” within the meaning of this Act.

- (e) Any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things of which it is to be taken to be divested for the purpose of arriving at the full site value from the gross value of the land and of which it would be necessary to divest the land for the purpose of realising the full site value.

In the Opinion of the Commissioners.—Subject, apparently, to appeal (Section 33, Sub-section (1), and see Section 9, note).

This deduction is of a definite sum or sums, ascertainable presumably on the basis of a contractor's estimate.

To Divest the Land, &c.—See Section 25, Sub-section (2). For the purpose of arriving at “site value” it has been assumed that the buildings, &c., have been removed; and the owner is consequently assumed to have spent money in removing them, which, *pro tanto*, reduces the benefit which it is assumed that he would obtain from a sale of the land without them. It is not clear that there is any distinction between the “buildings of which it is taken to be divested” and the buildings “of which it would be necessary to divest the land for the purpose of realising the full site value.”

Where any works executed or expenditure incurred for the purpose of improving the value

of the land for agriculture have actually improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture, the works or expenditure shall, for the purpose of this provision, be treated as having been executed or incurred also for the latter purposes.

See Section 25, Sub-section (4) (b), *supra*.

Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section.

See Section 25, Sub-section (1), note. The words in brackets are necessary because the calculation of the site value of land on an occasion on which increment value duty is collected, though it includes all the deductions contained in Section 25. Sub-section (4), starts from a different value. In the present section this calculation starts from a value based on a hypothetical sale of the fee simple; on the occasions referred to (see Section 2, Sub-section (2)) it starts from a value based on an actual sale or lease, or (on the occasion of death) from the principal value as ascertained under The Finance Act, 1894. In the case, however, of the periodical occasions on which bodies corporate or unincorporate pay increment value duty (Section 1, Sub-section (c), and Section 2, Sub-section (2) (d)), the calculation, being from the total value, is identical with that prescribed by the present section.

(5) The provisions of this section are not applicable for the purpose of the valuation of minerals.

See Section 23.

CHAPTER III.

INCREMENT VALUE DUTY

(SECTIONS 1 TO 12).

SUMMARY OF THE SECTIONS.

INCREMENT value duty is a stamp duty at the rate of one pound for every complete five pounds of the increment value of land (Section 1, and Section 3, Sub-section (6)).

The increment value of the land is the amount by which the site value, as ascertained on an occasion on which duty is to be collected, exceeds the original site value ascertained (under Sections 25 to 32) as on the 30th April, 1909 (Section 2, Sub-section (1)).

The occasions on which duty is to be collected are grouped under three headings:—

- (a) First, on the transfer on sale of the fee simple of or any interest in the land (within a certain limited meaning given to the word “interest”) in pursuance of a contract made after the commencement of the Act, or on the grant, in pursuance of such a contract, of

a lease for over fourteen years (Section 1, Sub-section (a)). In this case the site value on the occasion is the value of the consideration for the transfer of the fee simple, or, in the case of the grant of a lease or the transfer on sale of an interest less than the fee simple, the value of the fee simple calculated on the basis of the value of the consideration for the lease or transfer; subject, in every case, to the deductions specified in Section 25, Sub-section (4) (Section 2, Sub-sections (2) (a) and (b)).

(b) Secondly, on the death of any person when the fee simple or any interest is comprised in "property passing on the death" within the meaning of The Finance Act, 1894 (Section 1, Sub-section (b)). In this case the site value on the occasion is the "principal value" within the meaning of the same Act if the property is the fee simple, and if the property is an interest in land the value of the fee simple calculated on the basis of the principal value of the interest, subject, in every case, to the same deductions (Section 2, Sub-section (2) (c)).

(c) Thirdly, in the case of bodies corporate or unincorporate which escape the liability arising on death, "occasions" arise on the 5th April, 1914, and in every subsequent fifteenth year (Section 1, Sub-section (c), and Section 6,

Sub-section (1)) ; and the site value on the "occasion" is the "total value" to be ascertained as under Section 25, Sub-section (3), less the same deductions (Section 2, Sub-section (2) (d)).

But if the land has depreciated in value, as is shown by any sale or mortgage within twenty years before 30th April, 1909, the higher value so shown may be substituted for the original site value (Section 2, Sub-section (3)).

On each such occasion increment value duty, or a proportionate part of the duty, so far as it has not been paid on any previous occasion, is to be collected (Section 1).

With regard to the deductions allowed in calculating site value on these occasions, no deduction is allowed which could have been, but was not claimed on the original valuation under Sections 26 to 32 (Section 12).

On occasions (a) the transferor or lessor pays the duty, and must on each occasion present to the Commissioners the instrument by which the transfer or lease is effected, or agreed to be effected, or reasonable particulars thereof for the purpose of assessment of duty ; and the instrument will be stamped with a stamp denoting either that duty has been assessed and paid, or that particulars have been furnished and security given for the payment of the duty, or that no duty was payable (Section 4, Sub-sections (1), (2), and (3)). Duty assessed on each occasion is for purposes of calculating duty on future occasions deemed to have been paid (Section 4, Sub-section (4)).

Provision is made for payment by instalments where the consideration (*e.g.* on the grant of a lease) is received by periodical payments (Section 4, Sub-section (5)), and for return of duty in the event of the transaction falling through (Section 4, Sub-section (6)).

On occasions (*b*) the duty is to be assessed and collected as estate duty is assessed and collected under The Finance Act, 1894; but where any interest in land in respect of which the duty is payable is property passing to the personal representative as such, the duty is to be payable out of that interest in exoneration of the rest of the estate (Section 5). But duty assessed is not in this case expressed to be deemed to have been paid for purposes of calculation of duty on future occasions, and it is doubtful if the omission is intentional.

On occasions (*c*), the duty is to be assessed and collected on an account of increment value to be delivered by the body concerned in 1914, and in every subsequent fifteenth year as a part of the account to be delivered under Section 15 of The Customs and Inland Revenue Act, 1885 (Section 6, Sub-sections (1), (2), and (3)); it may be paid by fifteen yearly instalments (Section 6, Sub-section (3)); duty assessed on an account so delivered is to be deemed to have been paid for the purposes of calculation of duty on future occasions (Section 6, Sub-section (4)); and the liability of the body to duty on all the occasions (*a*) is not in any way affected (Section 6, Sub-section (5)), but an account under this section need not be delivered on a periodical occasion if, under

subsequent provisions of the Act, duty is not to be collected on that occasion (Section 6, Sub-section (5)).

On every "occasion" credit is to be given for duty paid (or deemed to have been paid) on previous occasions, the remainder only being deemed to be unsatisfied; and all necessary apportionments of duty paid on previous occasions are to be made (Section 3, Sub-section (1)). Further, when it is a lease or other interest less than the fee simple the dealing in which gives rise to the occasion, though the duty is calculated, as has been seen, on the basis of the value of the fee simple, only such proportion of the duty is payable as is determined to be payable in respect of the lease or other interest concerned (Section 3, Sub-section (2) and (3)). Provision is made for the case of settled land (Section 3, Sub-section (4)), and small increments are exempted altogether, subject to a proviso limiting the total amount of such exemption allowed within a period of five years (Section 3, Sub-section (5)). But for the purposes of calculating duty on future occasions duty so remitted is deemed to have been paid.

Further exemptions are provided for as follows:—

In the case of agricultural land duty is not to be charged while the land has no higher value than its market value at the time for agricultural purposes only (Section 7).

Duty is not to be charged on the site of a small dwelling-house (as defined in the section) used by the owner as his residence (Section 8, Sub-section (1)), or in the case of agricultural

land (whether its agricultural value be its highest value or not) occupied and cultivated by the owner so long as he does not own more than fifty acres in all and the average total value of the land in question does not exceed £75 an acre (Section 8, Sub-section (2)), the duty in both these cases being deemed to have been paid (Section 8, Sub-section (5)).

An exemption limited to the periodical occasions is granted in the case of land *bonâ fide* held by a body corporate or unincorporate for the purpose of games or recreation, and without any view to the payment of dividend or profit (Section 9), but the duty is not in this case deemed to have been paid.

Duty is not to be collected in the case of Crown lands, including the lands of any department of Government, the duty being deemed to have been paid (Section (10)).

The grant, transfer, or passing on death of a lease of any separate tenement, flat, or dwelling in a building is not to create an occasion for the collection of duty, nor is duty to be collected in respect of such a leasehold interest on any periodical occasion (Section 11).

The increment value duty on minerals is not to be calculated under these sections, but is provided for in Sections 20 to 24 (see Chapter VI.).

PART I.

DUTIES ON LAND VALUES.

Increment Value Duty.

Duty on
increment
value.

1. Subject to the provisions of this Part of this Act, there shall be charged, levied, and paid on the increment value of any land a duty, called increment value duty, at the rate of one pound for every complete five pounds of that value accruing after the thirtieth day of April nineteen hundred and nine, and—

Increment Value.—Defined in Section 2.

Land.—For the meaning of “land” see Section 41 and notes to Section 26, Sub-section (1), p. 7. Minerals are included, but are dealt with in a special manner prescribed by Sections 20 to 24.

- (a) On the occasion of any transfer on sale of the fee simple of the land or of any interest in the land, in pursuance of any contract made after the commencement of this Act, or the grant, in pursuance of any contract made after the commencement of this Act, of any lease (not being a lease for a term of years not exceeding fourteen years) of the land; and

Occasion.—See note to Section 4, Sub-section (2).

Transfer on Sale.—As to the meaning of this, *cf.* the definition of a “Conveyance on Sale” in Section 54 of The Stamp Act, 1891 (54 & 55 Vict. c. 39), as including (not “meaning”) every instrument, and every decree or order of any Court or of any

Commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction. Under the present Act a transfer without any document at all would presumably be an "occasion," though the provisions as to stamping (Section 3, Sub-section (6), and Section 4) may raise a doubt by suggesting that only documents are contemplated. But though a transfer without a document may possibly not be an occasion, this will only mean that the duty to be paid by the transferee on the next occasion (*e.g.* death) will be the larger by the amount which the transferor has escaped (see Section 3, Sub-section (1)). "Sale" appears to include "exchange," as by Section 2, Sub-section (2) (a), a consideration other than money appears to be contemplated (see note to that sub-section); but the point is not free from doubt, as sale is usually treated as distinct from exchange (*cf.*, for instance, Section 77 of The Crown Lands Act, 1829, set out in Section 10, Sub-section (2). note). A transfer on sale clearly does not include a mortgage; but, *semble*, it does include a foreclosure (*cf.* the word "purchase," Section 14, Sub-section (1), note. See also Section 14, Sub-section (5), note, and Section 4, Sub-section (1), note).

For the case of transfers under the Lands Clauses Acts see Section 38, Sub-section (3).

Fee Simple means the fee simple in possession not subject to any lease, but does not include an undivided share in the fee simple in possession (Section 41). In the case of copyholds and customary freeholds a reference to the fee simple is to be treated throughout as a reference to the whole copyhold as customary interest or estate (Section 40, Sub-section (1)).

For the case of a mortgagee who is liable to any duty see Section 39, Sub-section (4).

For the case where the land or any interest therein is settled, or vested in a trustee, and the tenant for life or trustee is the person liable to pay, see Section 39, Sub-sections (1) and (2).

Any Interest in the Land.—By Section 41 "the expression 'interest' in relation to land includes any undivided share in a fee simple in possession, and includes a reversion expectant on the determination of a lease, but does not include any other

interest in expectancy,¹ or an incumbrance as defined by this Act, or any fixed charge as defined by this Act, or any purely incorporeal hereditament, or any leasehold interest under a lease for a term of years not exceeding fourteen years."

"The expression 'incumbrance' includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge, as defined by this Act" (Section 41); and "the expression 'fixed charge' means any rent-charge as defined by this Act (*i.e.* tithe or tithe rent-charge, or other periodical payment or rendering in lieu of or in the nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land), and any burden or charge (other than rates or taxes) arising by operation of law or imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers, or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land."

In the case of a building used for separate tenements, flats, or dwellings, the grant, transfer, or passing on death of a lease of any such separate tenement, flat, or dwelling is not an "occasion" within the meaning of Section 1 (Section 11).

Any Contract, &c.—If the contract was made before the commencement of the Act there is no "occasion" for the payment of increment value duty, even though the transfer took place after such commencement. But, *semble*, the transfer must be in the terms provided for in the contract, and no material variation will be allowed. Such variation would import a new and later contract (*cf.* Section 4, Sub-section (7), by which, if the agreement is stamped, any conveyance, assignment, or lease in conformity with it need not be stamped).

The Act received the Royal Assent on the 29th April 1910.

Any Lease.—"The expression 'lease' includes an underlease and an agreement for a lease or underlease, but does not include

¹ *Cf.* the definition in The Finance Act, 1894, Section 22, Sub-section (j). "The expression 'interest in expectancy' includes an estate in remainder or reversion, and every other future interest, whether vested or contingent, but does not include reversions expectant upon the determination of leases."

a term of years created solely for the purpose of securing money until the term becomes vested in some person free from any equity of redemption" (Section 41).

By Section 41 "the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined."

By Section 40, Sub-section (2), "in the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, this Part of this Act shall have effect as if the land were freehold land and the copyhold interest were a leasehold interest."

For the provisions as to mining leases see Sections 20 to 24.

The occasions on which duty is to be collected under this sub-section may be summarised as follows:—

(a) Transfer on sale of—

1. The fee simple in possession.
2. Any undivided share in the fee simple in possession.
3. Any reversion on a lease, underlease, or agreement for a lease (other than a term of years for securing money, unless such term has become vested in some person free from any equity of redemption).
4. Any lease, underlease, or agreement for a lease for a term exceeding fourteen years.
5. Any other interest in land not expressly excepted below.

(b) The grant of any lease, underlease, or agreement for a lease (other than a term of years for securing money) for a term of years exceeding fourteen (any period for which the lease may be renewed under an obligation to renew being included in the term of the lease).

The following transactions are expressly excepted:—

(a) Transfer on sale of—

1. Any interest in expectancy other than a reversion on a lease, underlease, or agreement for a lease.
2. Any mortgage, trust for securing money, lien, or charge of a portion, annuity, or any capital or annual sum.
3. Any tithe, tithe rent-charge, or other periodical payment or rendering in lieu of or in the nature of tithe.
4. Any fee farm rent, rent seek, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land.
5. The benefit of any burden or charge arising by operation of law, &c. (as defined in the definition of "fixed charge").
6. Any purely incorporeal hereditament.
7. Any lease, underlease, or agreement for a term of fourteen years or less.

(b) The grant of any lease for a term of fourteen years or less (including the period of renewal as above stated).

(b) On the occasion of the death of any person dying after the commencement of this Act, where the fee simple of the land or any interest in the land is comprised in the property passing on the death of the deceased within the meaning of sections one and two, sub-section (1) (a), (b), and (c), and sub-section three, of the Finance Act, 1894, as amended by any subsequent enactment; and

57 & 58 Vict.
c. 30.

Commencement of the Act.—*I.e.* the 29th April, 1910.

Fee Simple, Interest in Land. See notes to last sub-section.

Separate Tenements.—See note to last sub-section.

Comprised in the Property passing on the Death of the Deceased.—The sections of The Finance Act, 1894, are :—

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty called “estate duty,” at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty.

2 (1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say—

(a) Property of which the deceased was at the time of his death competent to dispose;

(b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(c) Property which would be required on the death of the deceased to be included in an account under Section 38 of The Customs and Inland Revenue Act, 1881, as amended by Section 11 of The Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words “voluntary” and “voluntarily” and a reference to a “volunteer” were omitted therefrom.

* * * * *

(3) Property passing on the death of the deceased shall not be deemed to include property held by the

deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise.

Further, by Section 22, Sub-section (1) (l), of The Finance Act, 1894, "the expression 'property passing on the death' includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression 'on the death' includes 'at a period ascertainable only by reference to the death.'"

The property required to be included in an account under The Customs and Inland Revenue Acts of 1881 (Section 38) and 1889 (Section 11), as extended by Section 2, Sub-section (1) (c), of The Finance Act, 1894, above quoted, therefore, is all property real or personal (1) Taken as a *donatio mortis causa* or taken under a disposition purporting to operate as an immediate gift *inter vivos* which shall not have been *bonâ fide* made twelve months¹ before the death, including property taken under any gift whenever made of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him; (2) Caused by a person absolutely entitled thereto to be transferred to or vested in himself and any other person jointly (which expression includes any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert or by arrangement with any other person), so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person; and (3) Passing under a settlement otherwise than a will, but including any trust, whether in writing or otherwise, and if contained in a deed or other instrument

¹ By Section 59, Sub-section (1), of the present Act this period is increased to three years in the case of a person dying on or after 30th April, 1909, subject to certain exceptions.

effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person whereby an interest for life or any other period determinable by reference to death, or any power to restore to himself or to reclaim the absolute interest in such property is reserved to the settlor; the words "such property" including always the proceeds of sale of the property.

By The Finance Act, 1896:—

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the the principal Act (The Finance Act, 1894) to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.
15. (1) Where by a disposition of any property an interest is conferred on any person other than the disponent for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponent, or of any benefit to him by contract or otherwise, and the only benefit which the disponent retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverting to the disponent in his lifetime.
- (2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly,

or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by Section 1 of The Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

By Section 11, Sub-section (1), of The Finance Act, 1900 (63 Vict. c. 7), "in the case of every person dying after the 31st day of March, 1900, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of The Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was *bonâ fide* made or effected twelve months before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise."

And by Section 59, Sub-section (1), of the present Act, in the case of a person dying on or after the 30th. April, 1909, the period of twelve months is increased to three years, unless the gift *inter vivos*, surrender, assurance, divesting, or disposition was made or effected before the 30th April, 1908, or made or effected for public or charitable purposes.

(c) Where the fee simple of the land or any interest in the land is held by any body corporate or by any body unincorporate as defined by section twelve of The Customs and Inland Revenue Act, 1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, on such periodical occasions as are provided in this Act, 48 & 49 Vict.
c. 51.

the duty, or proportionate part of the duty, so far as it has not been paid on any previous occasion. shall be collected in accordance with the provisions of this Act.

Fee Simple, Interest in Land. See notes to Section 1 (a). *supra*.

Separate Tenements.—No duty is collectable under this sub-section where the interest held by the body is only a leasehold interest in a separate tenement, flat, or dwelling (Section 11).

Body Corporate includes, of course, a statutory company; but by Section 38 neither increment value duty, reversion duty, nor undeveloped land duty are to be charged in respect of any land whilst it is held by a statutory company for the purposes of their undertaking, and cannot be appropriated by the company except to those purposes. A statutory company need not make any returns with respect to any such land for the purposes of the provisions as to valuation other than as to the actual cost of the land to the company, this cost being substituted for the original site value of the land (Section 38, Sub-section (2)); and for "original site value" see Section 27, Sub-section (1), p. 11.

Bodies corporate which are rating authorities as defined in Section 35, Sub-section (2), are not chargeable with any duty under Part I. of the Act in respect of any land, or interest in

land, held by them or on their behalf, the duty which, but for this exemption, would be collected being deemed to have been paid. But land held by such authorities is not exempt from valuation under Sections 25 to 32.

An exemption limited to the periodical occasions is also allowed in respect of land held for the purposes of a body constituted for charitable purposes (Section 37, Sub-section (1)), and for the purposes of registered societies and companies precluded from dividing profit (Section 37, Sub-section (2)).

Body Unincorporate.—By Section 12 of The Customs and Inland Revenue Act, 1885, “the term ‘body unincorporate’ includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty.”

Such Periodical Occasions.—When the land is held by a corporate or unincorporate body within the meaning of this sub-section, and consequently would, in the absence of any transfer on sale or lease as provided for in Section 1, Sub-section (a), never become liable to increment value duty, provision is made by Section 6 that such duty is to be collected on the 5th of April, 1914, and in every subsequent fifteenth year, and for the purpose of assessment the body corporate or unincorporate is to deliver “an account of the increment value of the land” (Section 6, Sub-section (2)). The duty may be paid in fifteen equal yearly instalments (Section 6, Sub-section (3)). Such bodies, nevertheless, remain liable to duty on any of the “occasions” specified in Section 1, Sub-section (a), (see Section 6, Sub-section (5)). But nothing in this section (Section 6, Sub-section (5)) is to oblige an account to be delivered of the increment value of any land on any periodical occasion if under the subsequent provisions of the Act increment value duty in respect thereof is not to be collected on that occasion (*cf.* Section 9 (land used for games or recreation)). See notes to Section 6.

Proportionate Part.—*I.e.* in the case of a lease or an interest in land, such proportion of the duty on the whole increment value

is collected as represents the proportion between the value of the lease or interest and the value of the fee simple (Section 3, Sub-section (3)).

So far as it has not been paid.—Duty is not payable twice on the same increment. See Section 3, Sub-section (1).

“Paid” includes “deemed to have been paid.” See Section 7, note.

All decisions of the Commissioners under this section appear to be subject to appeal (Section 33, Sub-section (1), and see Section 9, note).

2. (1) For the purposes of this Part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation.

Definition of
increment
value.

As to minerals see Sections 22 and 23.

Increment Value.—The method of ascertaining the original site value is prescribed by Section 25 (see p. 44. *supra*). Such site value, ascertained by the Commissioners under Sections 26 to 32, and after all objections and appeals have been dealt with, becomes the “original site value,” or starting point for all subsequent calculations. When the “occasion” arises the value will be estimated again in accordance with the terms of Section 2, Sub-section (2), and after all allowable deductions have been made from the value so ascertained, the amount of the original site value will then be deducted, and the difference will be the increment value.

For the case where the value has depreciated within twenty years before 30th April, 1909, see Section 2, Sub-section (3), p. 72. *infra*.

For the deduction allowed for payments in respect of “betterment” see Section 36.

(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be—

- (a) Where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and

Transfer on Sale.—See Section 1, Sub-section (a), note, p. 56.

The Value of the Consideration.—The words “the value of” seem to indicate that “sale” includes exchange, and there can be little doubt that this is the true construction. See Section 1, Sub-section (a), note “transfer on sale.”

The amount is the gross amount payable by the purchaser, without allowance for costs or expenses. See Section 25, Sub-section (1), note, p. 39.

This value is subject to the deductions referred to at the end of this section (see p. 71).

- (b) Where the occasion is the grant of any lease of the land, or the transfer on sale of any interest in the land, the value of the fee simple of the land, calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest; and

Lease. including underlease and agreement for a lease. See Section 1, Sub-section (a), note, and Section 41.

Transfer on Sale.—See Section 1, Sub-section (a), note, and note to last sub-section.

Calculated on the basis, &c.—*I.e.* the questions to be asked apparently are:—This land being leased for so many years at so much a year, first, what is the capital value of the consideration for that lease (see Section 32, Subsection 1)), and, secondly, that

being the value of such a lease, what value is thereby indicated as being attributable to the fee simple? It seems, however, that an answer can only be found in the roughest way. The value ascertained under this sub-section is subject to the deductions referred to at the end of this section (see p. 71).

- (c) Where the occasion is the death of any person, and the fee simple of the land is property passing on that death, the principal value of the land as ascertained for the purposes of Part I. of The Finance Act, 1894, and where any interest in the land is property passing on that death the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained; and

57 & 58 Vict.
c. 30.

Property Passing, &c.—See Section 1, Sub-section (b), note, p. 61.

Principal Value.—Part I. of The Finance Act, 1894, relates to estate duty, and the provisions for determining the principal value of property for such duty are contained in Section 7 of that Act.

It is the price which in the opinion of the Commissioners such property would fetch if sold in the open market, with a proviso that in the case of agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value is not to exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under The Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed (Section 7, Sub-section (5), of the 1894 Act). The Commissioners are to assess the value in such manner and by such means as they think fit (Section 7, Sub-section (8)).

But by Section 60, Sub-section (1), of the present Act, in the case of any person dying on or after the 30th April, 1909, the above proviso as to agricultural property ceases to have effect, "except in the case of the valuation of property consisting of a tenancy from year to year . . . and for determining the gross value or the net value of property for the purpose of Section 16 of the principal Act" (The Finance Act, 1894); and in estimating the principal value of any property under the above Section 7, Sub-section (5), of The Finance Act, 1894, "in the case of any person dying on or after the 30th April, 1909, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time: Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account" (Section 60, Sub-section (2)).

The above value is subject to the deductions referred to at the end of this section.

- (d) Where the occasion is a periodical occasion on which the duty is to be collected in respect of the fee simple of any land or of any interest in any land held by a body corporate or unincorporate, the total value of the land on that occasion to be estimated in accordance with the general provisions of this Part of this Act as to valuation;

Periodical Occasion.—See Section 1, Sub-section (c), and Section 6.

Total Value.—*I.e.* the amount which the fee simple might be expected to realise if sold at the time in the open market by a willing seller in its then condition free from incumbrances,

burdens, charges, or restrictions (other than rates or taxes), *i.e.* the gross value, less the amount by which that gross value would be diminished if the land were sold subject to fixed charges, public rights of way, &c., rights of common, easements, and restrictive covenants (Section 25, Sub-sections (1) and (3)).

The above value is subject to the deductions next referred to.

Subject in each case to the like deductions as are made, under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value.

This provision restores to the definition of "site value on an occasion" the deductions which were excluded by the words in brackets in the last paragraph in Section 25, Sub-section (4), p. 44: namely—

1. The value added to the land by the buildings, structures (as limited in Section 25, Sub-section (2)), timber, &c., and other growing things.
2. The value added by works and capital expenditure of any person interested in the land.
3. The value added by the appropriation or gift of land by any person interested in the land for streets, &c.
4. The value added by expenditure on redemption of land tax, &c.
5. The sums necessary to divest the land of buildings. &c.

These amounts, in so far as the reason for the deduction then existed, were or could have been all deducted when the original site value was fixed (Section 25, Sub-section (4)), and in the same way they can be deducted when the site value on the happening of an occasion is fixed; but by Section 12, if any particular deduction could have been, but was not, claimed on the assessment of the original site value, it cannot be claimed on the assessment on any "occasion."

All decisions of the Commissioners under this section appear to be subject to appeal. See Section 33, Sub-section (1), and Section 9, note.

(3) Where it is proved to the Commissioners on an application made for the purpose within the time fixed by this section that the site value of any land at the time of any transfer on sale of the fee simple of the land or of any interest in the land, which took place at any time within twenty years before the thirtieth day of April, nineteen hundred and nine, exceeded the original site value of the land as ascertained under this Act, the site value at that time shall be substituted, for the purposes of increment value duty, for the original site value as so ascertained, and the provisions of this Part of this Act shall apply accordingly.

Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act.

This provision shall apply to a mortgage of the fee simple of the land or any interest in land in the same manner as it applies to a transfer, with the substitution of the amount secured by the mortgage for the consideration.

An application for the purpose of this section must be made within three months after the original site value of the land has been finally settled under this Part of this Act.

See Section 27, Sub-sections (1) to (4), notes, p. 10.

Application.—This may presumably be made by any person interested (see Section 27, Sub-section (5), note, p. 15).

That the Site Value of any Land, &c.—This provision enables the owner or person interested to obtain the substitution of a higher value for the original site value ascertained under Sections 25, 26, and 27, when the value of the land has depreciated within the twenty years before April 30th, 1909, but only if he can prove a value within that period based on a sum actually realised on a transfer on sale or a mortgage. He will thus secure a larger deduction from the value ascertained on any subsequent "occasion," and the increment will be smaller. The sale or mortgage in question is not in any way restricted to a sale or mortgage by the present owner or person interested.

Transfer on Sale.—See Section 1, Sub-section (a), note, p. 56.

Fee Simple.—As defined in Section 41; and see Section 1, Sub-section (a), note.

Original Site Value.—See Sections 25, 26, and 27.

For the Purposes of Increment Value Duty.—These words leave the original site value as first ascertained still valid for all other purposes, including undeveloped land duty, so that the owner does not lose by any increase in the amount of undeveloped land duty payable.

Site Value shall be Estimated, &c.—Cf. Section 2, Sub-section (2). The consideration for the transfer of, say, fifteen years ago being known, if it was a transfer of the fee simple, the value of that consideration, less the deductions allowable under the last paragraph of Section 2, Sub-section (2), was the site value; and if it was the transfer of any interest (as defined in Section 41) the value of the fee simple, calculated on the basis of the value of the consideration for the transfer, less the same deductions, was the site value. But it will be a matter of practical difficulty to estimate the amount of the deductions in the case of a transaction which took place fifteen or twenty years ago, for it must be remembered that (by Section 12) a deduction which could have been, but was not, claimed then cannot be claimed when the site value is being ascertained on an "occasion."

A Mortgage.—In calculating the value on the basis of the amount secured by the mortgage, it would seem that the deductions are to be made which are referred to in the last paragraph of Section 2, Sub-section (2). Regard must presumably be had to the fact that such amount is substantially smaller than the price which would be given for the land or interest.

Finally Settled.—See Section 27, Sub-section (4), p. 13.

All decisions of the Commissioners under this section seem subject to appeal (Section 33, Sub-section (1); and see Section 9, note).

General
provisions
as to
collection of
increment
value duty.

3. (1) On each occasion on which increment value duty is collected on the increment value of any land, such an amount of duty shall be deemed to be unsatisfied as the Commissioners determine, after giving credit for the amount of duty paid on previous occasions. The Commissioners shall make such apportionments and reapportionments of any duty paid on previous occasions as they think necessary for the purpose of giving effect to this provision.

Occasion.—See Section 1, p. 56.

Deemed to be Unsatisfied.—This expression is used because it does not necessarily follow that duty found payable on any occasion must be paid. See notes, *infra*.

As the Commissioners Determine.—Appeal lies against their decision. See Section 33, Sub-section (1).

Duty Paid means paid by any person whose dealing with the land or any interest in it, or whose death, or whose holding of the land or interest on a periodical occasion, created an "occasion." The person liable only pays his proportionate share after deduction of all proportionate shares paid, or deemed to be paid, on the same increment value. Credit is also given

for any payment on account of "reversion duty" when the "benefit accruing to a lessor" in respect of which it was paid is identical with the increment value. See Section 14, Sub-section (4).

Such Apportionments, &c.—Cf. Section 1, note. Any such apportionment is subject to appeal (Section 33, Sub-section (1)).

To take a simple case, a piece of land whose original site value is £1000 may on the first occasion be sold as a whole and show a site value of £1500. Omitting for the moment any question of the ten per cent. deductions provided for in Sub-section (5) of this section, the duty paid on this first occasion will be one fifth of the £500 increment: namely £100. But on the second occasion only half of the land (say half A) may be sold, say at a price showing a site value of £1000. This half A, though a half in area, may or may not be a half in site value; it is necessary, therefore, in the first place to ascertain what proportion in site value this half A originally bore to the other half B. This apportionment the Commissioners make under their power (given by Section 29, Sub-section (2)) to make apportionments and re-apportionments of the original site value. Having ascertained the relation of the half A now sold to the remaining half B so far as original site value is concerned, it is then necessary to calculate the increment on half A by deducting from the £1000 (its site value on the second "occasion") the proportion of the original site value so found to be attributable to half A. One fifth of the increment so found is the amount of the duty: from this amount is to be deducted such part of the £100 paid (or which is deemed to have been paid: see Section 4, Sub-section (4)) on the first "occasion" as is attributable to half A. The result is the amount of duty "deemed to be unsatisfied" under the present section. The case, of course, will be complicated in practice when only a part of the land or an interest was sold on the first occasion or when the occasion is the grant of a lease of the whole or a part.

(2) Where increment value duty is collected on the occasion of the transfer or passing on death of the fee simple of any land, or on any periodical occasion in the case of land held in fee simple by a

body corporate or unincorporate, the whole amount of the duty which is determined to be unsatisfied shall be collected by the Commissioners in accordance with rules made by them for the purpose.

On the Occasion.—See Section 1, Sub-sections (a) and (b).

Periodical Occasion.—See Section 1, Sub-section (c), and Section 6.

The Whole Amount, &c.—This and the following sub-section are necessary because the site value is always estimated on the basis of the value of the fee simple (Section 2, Sub-section (2), and Section 25, in which the starting point of the calculation is the "gross value" or amount which the fee simple (as limited in Section 25, Sub-section (1)) might be expected to realise in the open market). When the amount of the duty on the increment value is ascertained, and the occasion is the grant of a lease or the transfer or passing or, on the periodical occasions, the holding of an interest, only such part of the duty is payable as represents the proportion between the value of the lease or interest and the value of the fee simple.

Shall be Collected.—Not necessarily at once. For provisions as to collection in case of death see Section 5, and as to collection in the case of bodies corporate or unincorporate see Section 6, Sub-section (3) (payment by instalments of duty assessed on periodical occasions).

Rules.—At the time of writing these Rules have not been issued.

(3) Where increment value duty is collected on the occasion of the grant of a lease, or on the transfer or passing on death of any interest in land, or on any periodical occasion in the case of an interest in land held by a body corporate or unincorporate, such proportionate part of the duty shall be collected as may be determined by the Commissioners to be

payable in respect of the interest in land created, transferred, passing on death, or held, in accordance with rules made by them for the purpose.

See notes to last sub-section.

Such Proportionate Part.—The determination of the proportion is subject to an appeal (Section 33, Sub-section (1)), as also are apparently all other decisions under this section (see Section 9, note).

(4) Where on the occasion of the death of any person the property passing on the death comprises settled land in which the deceased or any other person had an interest ceasing on the death of the deceased, then—

(a) If the subject of the settlement at the time of the death is the fee simple of the land, increment value duty shall be collected as if the fee simple of the land passed; and

(b) If the subject of the settlement at the time of the death is any other interest in the land, increment value duty shall be collected as if that interest passed;

but that duty shall not be collected on any such occasion if under the provisions of section five of The Finance Act, 1894, as amended by any subsequent enactment, estate duty is not payable in respect of the settled land.

Property Passing on the Death.—See Section 1. Sub-section (b), note, p. 61.

Settled Land.—See Settled Land Act, 1882, Section 2, Sub-sections (1) and (3); and The Finance Act, 1894, Section 22, Sub-sections (1) (h) and (i).

Shall Not be Collected.—The relevant part of Section 5 of The Finance Act, 1894 (57 & 58 Vict. c. 30), is as follows:—

5 (2) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not . . . be payable in respect thereof, until the death of a person who was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property.

[To which is added by Section 13 of The Finance Act, 1898, the words “and who if on his death subsequent limitations under the settlement take effect in respect of such property was *sui juris* at the time of his death or had been *sui juris* at any time while so competent to dispose of the property.”]

(3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

And by Section 55 of the present Act, “For the purpose of any claim to relief from estate duty under Sub-section (2) of Section 5 (of The Finance Act, 1894) . . . in the case of persons dying on or after the 30th April, 1909, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.”

(5) For the purpose of the collection of duty on the increment value of any land under this section, the increment value shall be deemed to

be reduced on the first occasion for the collection of increment value duty by an amount equal to ten per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to ten per cent. of the site value on the last preceding occasion for the collection of increment value duty, and the amount of duty to be collected shall be remitted in whole or in part accordingly.

Any duty which by reason of this provision is remitted on any occasion shall not be collected and shall be deemed to have been paid:

Provided that no remission shall be given under this provision on any occasion which will make the amount of the increment value on which duty has been remitted during the preceding period of five years exceed twenty-five per cent. of the site value of the land on the last occasion for the collection of increment value duty prior to the commencement of that period or of the original site value if there has then been no such occasion.

This exemption may be illustrated by an example in the simplest form, thus:—Let the original site value be assumed to be £1000, as fixed on the original valuation as in April, 1909, under Sections 25 to 32. Assume an "occasion" in 1912, on which the site value is ascertained to be £1500, and the increment value therefore £500. This being the first occasion, that £500 is deemed to be reduced by an amount equal to ten per cent. on the original £1000, *i.e.* by £100, the amount on which duty is payable being thus £400, instead of £500; but the

duty is deemed to have been paid on the full £500. If a second "occasion" arises in 1914 and the site value is then ascertained to be £2000, the increment value (*i.e.* the excess over the original site value, Section 2, Sub-section (1)) is £1000. This £1000 is deemed to be reduced by an amount equal to ten per cent. of the 1912 site value, namely £150, leaving £850. On this £850, the duty will be £170: from this must be subtracted the duty paid and deemed to have been paid in 1912 (one fifth of £500, or £100) leaving £70 now payable. So far as the proviso is concerned it will be seen that in the five years preceding 1914 the amount of the increment value on which duty has been remitted has been £100 and £150, or £250 in all. This does not exceed twenty-five per cent. of the only site value with which, by that proviso, it can be compared, namely, the original site value of £1000, therefore the whole deduction is allowable. But if a further occasion arises in 1915, and the site value is then £2500, no further deduction under this section is allowable, the maximum for the five year period preceding 1915 having been already reached. If a fourth occasion arises, say in 1918, and the site value is then £3000, the increment value is £2000. Ten per cent. of the site value on the last preceding occasion (£2500 in 1915) is £250. The other remission in the five years, 1913 to 1918, has been £150 in 1914 (there being no remission in 1915), making in all £400. The last occasion prior to the commencement of the period 1913 to 1918 was in 1912, on which the site value was £1500, of which twenty-five per cent. is £375. Four hundred pounds is therefore £25 above the limit, and consequently only £225 can be allowed in 1918. (Assuming that the words "no remission shall be given on any occasion which will make the amount of the increment value on which duty has been remitted exceed twenty-five per cent.," &c., mean that the £250 must be reduced, not entirely disallowed, which seems to be their proper interpretation). This £225 will be deducted from the 1918 increment value of £2000, leaving £1775, on which the duty is £355, less all the duty previously paid or deemed to have been paid since the beginning.

If the occasion is the grant of a lease, or the transfer of a lease or any interest, it is a matter of arithmetic to work out the proportions payable, once the valuation has settled the proportion between the value of the lease or interest and the value of the fee simple.

(6) Increment value duty shall be a stamp duty collected and recovered in accordance with the provisions of this Act.

See The Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), Sections 21 to 24, 27, 32 to 35, and 39, and The Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38).

4. (1) On any transfer on sale of the fee simple of any land or of any interest in land, or on the grant of any lease of any land for a term exceeding fourteen years, increment value duty shall be assessed by the Commissioners and paid by the transferor or lessor, as the case may be.

Collection and recovery of duty in cases of transfers and leases.

Transfer on Sale.—See Section 1, Sub-section (a), note, p. 56.

Fee Simple, Interest in Land, Lease.—See Section 1, Sub-section (a), note.

Assessed by the Commissioners.—Subject to appeal (Section 33, Sub-section (1)), p. 26.

Increment Value Duty.—See Section 2, p. 67.

Transferor or Lessor.—By Section 41 “lessor” includes an underlessor and the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease.

“Transferor” and “lessor” do not include “persons who join in the execution of the instrument . . . for the purpose only of conveying any estate vested in them as trustees or encumbrancers, or of acknowledging the receipt of the consideration money, or of giving consent; and Sections 59, 60, and 62 of The Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), shall apply to the exercise of the powers of an owner under this Part of this Act in the same manner as they apply to the exercise of the powers of a tenant for life under that Act.” The effect of the above provision in

conjunction with these sections of the Settled Land Act is that when an infant is the owner his powers may be exercised by his trustees (if the land is settled), or by such person and in such manner as the court on the application of a testamentary or other guardian or next friend, either generally or in a particular instance, orders; and where a lunatic so found by inquisition is the owner, his powers may be exercised by his committee.

For the meaning of "owner" see Section 41.

Foreclosure of Mortgage.—A foreclosure seems clearly to be within the meaning of the words "transfer on sale" (see Section 1 (a), note, and Section 14, Sub-section (5), note; cf. also The Finance Act, 1898, Section 6). The mortgagor must be taken to be the transferor, and he must presumably take such steps as are prescribed in the next section. There is no power to compel the mortgagee to give the Commissioners any assistance, but it will be to his advantage to see that a proper assessment of duty is made as against the mortgagor, for the mortgagee will want credit for the amount then paid or deemed to have been paid (Section 4, Sub-section (4)) when on subsequent occasions he becomes himself liable to duty (see Section 14, Sub-sections (4) and (5)).

(2) It shall be the duty of the transferor or lessor, on the occasion of any transfer on sale of the fee simple of any land or of any interest in land or on the grant of any lease of any land for a term exceeding fourteen years, to present to the Commissioners, in accordance with regulations made by them, the instrument by means of which the transfer or the lease is effected or agreed to be effected or reasonable particulars thereof for the purpose of the assessment of duty thereon, and, if the transferor or lessor fails to comply with this provision, he shall be liable on summary conviction to a fine not exceeding ten

pounds, and to pay interest at the rate of five per cent. per annum on any duty ultimately payable by him as from the date on which the instrument has been executed, but any person aggrieved by any conviction or order of a court of summary jurisdiction under this provision may appeal therefrom to a court of quarter sessions.

Transferor or Lessor.—See last sub-section, note.

On the Occasion, &c.—See Section 1. Occasion seems to be an expression denoting not any particular point of time, but, generally, the happening of the transaction. This section speaks, for instance, of “the occasion of a transfer,” but contemplates the presentation of the instrument by which the transfer is “agreed to be affected”; and Sub-section (6) provides for the possibility of the date of the agreement being the time when the duty is payable and paid, and of the actual transfer being never carried into execution. But either the transfer (or lease) or the agreement may be presented, and it is left doubtful when the presentation must be made. See note “fails to comply,” p. 84, *infra*.

The instrument or particulars must be presented whether duty is payable or not (see Paragraph 10 of regulations mentioned *infra*).

Regulations.—See Appendix A.

The regulations do not apply to the grant of a mining lease. (See Sections 20 to 24 for the special provisions as to minerals.) The time prescribed for presentation of the instrument is, if possible, after execution by the transferor or lessor, and a copy or an abstract is required in addition to the instrument. For what is required in the alternative in the way of particulars see Paragraphs 3 and 11 of these regulations. But presentation of the particulars does not obviate the necessity of getting the instrument stamped. But the instrument may be stamped “at any future date” (Regulation 12). As to the requirement of security see Regulation 14. As to periodical payments see Regulation 16.

Attention is specially drawn (Regulation 8) to the fact that the presentation and stamping of an instrument under this section

will not in any way affect the liability of the instrument to the ordinary stamp duty. The instrument must, therefore, if not drawn on material duly stamped, be presented in the ordinary course within thirty days for stamping (Stamp Act, 1891, Section 15). The two stamps can be impressed at the same time, and when an instrument is lodged for adjudication under Section 12 of The Stamp Act, 1891, the application for an Increment Value Duty stamp may be made at the same time (Regulation 9).

Fails to Comply.—The omission of the word “wilfully” must be noted. Mere default, whatever the reason, constitutes the offence. But nothing is provided as to any time within which the presentation must be made, except the words “on the occasion of any transfer” and “on the grant of any lease,” which may mean simultaneously with the transfer or grant. The regulations contain no guidance on this point. See note “occasion,” p. 83, *supra*.

(3) Any such instrument shall not, for the purposes of section fourteen of The Stamp Act, 1891, and notwithstanding anything in section twelve of that Act, be deemed to be duly stamped unless it is stamped—

54 & 55 Vict.
c. 39.

- (a) either with a stamp denoting that the increment value duty has been assessed by the Commissioners and paid in accordance with the assessment; or
- (b) with a stamp denoting that all particulars have been delivered to the Commissioners, which, in their opinion, are necessary for the purpose of enabling them to assess the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security; or

- (c) With a stamp denoting that upon the occasion in question no increment value duty was payable ;

but where an instrument is so stamped, it shall, notwithstanding any objection relating to the increment value duty, be deemed to be duly stamped so far as respects that duty.

See the regulations issued under this section. Appendix A.

Section 14 of The Stamp Act, 1891, is as follows:—

- 14 (1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

Sub-sections (2) and (3) are directions as to procedure.

4. Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

Section 12 of The Stamp Act, 1891, contains provisions somewhat different from those contained in the section of the present Act now under consideration, but applicable, in the absence of express provision to the contrary, to all stamp duties upon any

instruments (Stamp Act, 1891, Section 2). It was, therefore, necessary to exclude the provisions of that section, to which, however, reference should be made.

(a) and (c) will be the stamps impressed when there is no dispute; (b) is provisional and will only be impressed when security has (if required) been given (Regulation 14). Notice of the assessment will be given in writing (Regulation 15), and objection, if necessary, must then be taken.

All Particulars.—See Section 4, Sub-section (2); and Regulations 3, 5, 11, and 12, Appendix A.

Forms of particulars and of the statement to be furnished on application for a stamp have been issued. Appendix B.

Security.—See Regulation 14. It is to be noted that apart from the reference in Section 4, Sub-section (3) (b), there is no power expressly given by the Act to the Commissioners to require security.

(4) Any duty assessed by the Commissioners under this section shall be a debt due to the Crown from the transferor or lessor, as the case may be, and for the purpose of calculating the amount of increment value duty to be collected on any subsequent occasion shall be deemed to have been paid.

Debt Due to the Crown.—Cf. Inland Revenue Regulation Act, 1890; The Stamp Duties Management Act, 1891.

For the Purpose of Calculating.—The failure to recover increment duty from one owner, either owing to his default or by reason of some exemption, is not to prejudice a successor in title, who may on a subsequent "occasion" treat a duty payable on a previous occasion as paid. (See Section 3, Sub-sections (1) and (5)). But duty is not so "deemed to have been paid" when it is remitted or returned under Section 4, Sub-sections (5) and (6), *infra*. As to the words "deemed to have been paid" generally, see Section 7, note, p. 100.

(5) Regulations may be made by the Commissioners with respect to the mode in which any instrument is to be presented to them in order to be dealt with under this section, and for dispensing with the presentation of any instrument, or particulars thereof, in cases where arrangements are made for obtaining those particulars through any registry of lands, deeds, or title, or through a Register of Sasines, and with respect to the mode in which any application for a return of duty under this section is to be made, and for the payment of any increment value duty by instalments in the case of any lease or transfer on sale where the consideration is in the form of a periodical payment; and the Commissioners shall deal with any instrument presented to them and allow payment by instalments in accordance with those regulations. The regulations shall provide that where the duty to be collected on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due shall be remitted, and that in that case the amount of duty which, under this section, is deemed to have been paid shall be reduced by the amount of the instalments so remitted.

For the regulations issued hereunder see Appendix A. See Section 4, Sub-section (2), note.

By Section 93 all rules and regulations made by the Commissioners of Inland Revenue under the Act are to be laid

before Parliament as soon as may be, and if an address is presented to the King by either House within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything already done thereunder; and if any rule or regulation is so annulled any duty previously paid which would not have been payable but for that rule or regulation shall be repaid, but without prejudice to the Commissioners' right to re-assess the duty in accordance with any substituted rule or regulation.

Dispensing with the Presentation.—No provision is made for this by the regulations in England; but for Scotland (General Register of Sasines) see Regulation 19, and Ireland (Registrar of Titles, in cases where the Land Purchase (Ireland) Acts apply) see Regulation 20.

Return of Duty.—See Regulations 16 (vii.) and 17.

Payment by Instalments.—See Regulation 16 (ii.). Security for the payment of the whole will in such cases be required (Regulation 16 (iii.)).

Lease, Transfer on Sale.—See Section 1, notes, p. 56.

The Regulations shall Provide, &c.—See Regulation 16 (vii.).

The Lease is Determined.—The instalments will presumably be fixed in accordance with the length of the lease; and this provision seems to be intended to enable the lessor to pay his increment duty out of the rent as he receives it, and to absolve him from paying it so soon as the lease determines otherwise than by effluxion of time. No provision seems to be made (but see the note to the next sub-section) for a similar remission in the case of the lessor who chooses to pay his increment duty in a lump sum. It is assumed that everybody will pay by instalments.

Deemed to Have Been Paid.—See Section 4, Sub-section (4), *supra*, and Section 7, note, p. 100.

(6) In any case where increment value duty shall have been paid under the provisions of this section, but the transaction in respect of which the duty

shall have been paid was subsequently not carried into execution, the duty shall be returned to the transferor or lessor on his making application to the Commissioners within two years after the payment of the duty in accordance with regulations to be made by them under this section, and in that case the duty returned shall not be deemed to have been paid for the purposes of this section.

See Regulation 17.

Not Carried into Execution.—The cases contemplated are the payment of the duty on an agreement for a lease not followed by any lease or entry into possession by the lessee; or on an agreement for a transfer which for any reason is not carried into execution. By Section 4, Sub-section (2), either the transfer (or lease) or the agreement is to be presented for adjudication at a time which is left somewhat vague. But a question may arise as to whether a lease, where the lessee has entered into possession, but has, say, been ejected for non-payment of rent or breach of covenant before the end of the lease, is a "transaction not carried into execution" within the meaning of this section, thereby giving to the lessor who has paid his duty in a lump sum a remission corresponding to the remission given in the last paragraph of the last sub-section. It may be argued that the "execution" of a transaction is a wider term than the execution of a document, and that the "transaction" of a lease is not executed or complete until the term of it has expired; but on the whole it seems probable that the present section only contemplates a distinction between a lease and an agreement for a lease, and that the transaction is executed when the lease is executed or the lessee enters.

Deemed to Have Been Paid.—See Section 4, Sub-section (4), *infra*, and Section 7, note.

(7) Where any agreement for a transfer or agreement for a lease is stamped in accordance with this section it shall not be necessary to stamp any

conveyance, assignment, or lease made subsequently to and in conformity with the agreement, but the Commissioners shall, if an application is made to them for the purpose, denote on the conveyance, assignment, or lease the amount of duty paid.

See Section 4, Sub-sections (2), (3), (5), (6), and notes, and Regulation 7.

In Conformity with the Agreement.—See Section 1, Sub-section (a), note “Any contract,” p. 58.

Collection
and
recovery of
duty in
case of
death.
57 & 58 Vict.
c. 30.

5. The provisions as to the assessment, collection, and recovery of estate duty under The Finance Act, 1894, shall apply as if increment value duty to be collected on the occasion of the death of any person were estate duty; but, where any interest in land in respect of which increment value duty is payable is property passing to the personal representative as such, the duty shall be payable out of that interest in land in exoneration of the rest of the deceased's estate, and shall be collected upon an account to be delivered by the personal representative, setting forth the particulars of the increment value in respect of the property:

Provided that in respect of all property of the deceased, other than that assessed to increment value duty, the Crown shall, as a creditor in respect of such increment value duty, rank *pari passu* with the other creditors of the deceased.

See Section 1, Sub-section (b), (“Occasion” of death); Section 2, Sub-section (2) (c), (Site value on death); Section 3, Sub-section (4), (Settled land).

By Section 2, Sub-section (2) (c), the provisions of The Finance Act, 1894, Section 7 (as amended by Section 60. Sub-section (1), of the present Act), as to the assessment of principal value for purposes of estate duty are adopted for the purpose of assessing site value (subject to the deductions contained in Section 25, Sub-section (4)) on the occasion of death. Such provisions as there are in the 1894 Act as to the assessment of estate duty are merely that estate duty shall be levied at certain graduated rates on that principal value (Section 1), and the provisions as to aggregation (Section 4), which hardly seem relevant to the present purpose. The provisions for collection and recovery of estate duty which seem to be relevant are (in so far as they apply to land or any interest in land) Section 6 (estate duty is a stamp duty which the executor may pay in respect of real property which, by virtue of any testamentary disposition of the deceased, is under his control (and, *semble*, of all real property which devolves to him under The Land Transfer Act, 1897; see *infra*), or if the persons accountable for the duty request him to pay it; the executor, if he does not know the amount or value of the property, may state in the Inland Revenue Affidavit that it exists, and that he undertakes to bring in an account of it; so far as not paid by the executor, the duty must be collected upon an account delivered within six months after the death by the person accountable within the meaning of the Act, and payment may be made by instalments); Section 7 (which provides for allowances and other matters which do not seem to be applicable at all, and (in Sub-section (5)) lays down the rule for estimating principal value which is set out in the note to Section 2, Sub-section (2) (c)), *supra*; and gives the Commissioners power (by Sub-section (8)) to ascertain the value of the property in such manner as they think fit, and also power to inspect and report on property (*cf.* Section 31, Sub-section (2), of the present Act)); Section 8 (which applies the existing law and practice relating to death duties for the purpose of the collection and recovery of estate duty; adopts Sections 12 to 14 of The Customs and Inland Revenue Act, 1889; declares the persons accountable (where the executor is not accountable) to be every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property is vested;

provides for the delivery of an account and particulars from all persons accountable (including persons whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable), subject to a penalty for default; and gives the Commissioners power to allow postponement of payment, or after a certain time to absolve from payment, and to repay duty paid in excess of the amount due); and Section 11 (which gives the Commissioners power to discharge from and apportion duty). Section 9 seems also applicable in part. Section 10, which provides for appeals, must be taken to be superseded by Section 33 of the present Act, except as to Sub-sections (2), (3), and (4). (See Section 33, Sub-section (4), of the present Act, p. 30).

Property Passing to the Personal Representative as such.—This will now include such real estate as devolves under The Land Transfer Act, 1897, to the executor (*i.e.* all real estate vested in any person without a right in any other person to take by survivorship), and the provisions of The Finance Act, 1894, which have been roughly summarised above, must be read subject to this subsequent alteration of the law. The effect of the present section apparently is that, in the case of property so passing, it is no longer in the option of the executor to leave the person accountable to pay; but the duty attaches exclusively to the land or interest on which it is charged.

Provided that, &c.—*Cf.* the provision in Section 15, Sub-section (1).

By Section 62 of the present Act, "Where increment value duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land, or any interest in land, comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty under Sub-section (1) of Section 7 of the principal Act (Finance Act, 1894) for the amount of increment value duty so to be collected as if it were a debt."

6. (1) Where the fee simple of any land or any interest in land is held by any body corporate or by any body unincorporate, as defined by section twelve of The Customs and Inland Revenue Act,

Collection
and
recovery of
duty in
case of
property
held by

1885, in such a manner or on such permanent trusts that the land or interest is not liable to death duties, the occasions on which increment value duty is to be collected shall be the fifth day of April in the year nineteen hundred and fourteen and in every subsequent fifteenth year.

bodies
corporate or
unincorporate.
48 & 49 Vict.
c. 51.

Fee Simple, Interest.—See Section 1, Sub-section (a), p. 56, and Section 41.

Body Corporate or Unincorporate.—See Section 1, Sub-section (c), p. 65.

Statutory companies and rating authorities are exempt from duty. See Section 1, Sub-section (c), and Sections 35 and 38.

For special provisions in case of land held for charitable purposes and by registered societies see Section 37.

Occasions.—See Section 1, notes.

(2) The account to be delivered under section fifteen of The Customs and Inland Revenue Act, 1885, shall, in the case of the account to be delivered in the year nineteen hundred and fourteen and in every subsequent fifteenth year, contain an account of the increment value of the land, as on the preceding fifth day of April, and that section shall, save as in this Act is hereafter provided, apply for the purpose of increment value duty, whether the body corporate or unincorporate are chargeable with duty under Part II. of The Customs and Inland Revenue Act, 1885, or not.

The Account.—Section 15 of The Customs and Inland Revenue Act, 1885, imposes upon every body, corporate and unincorporate, chargeable with the annual stamp duty charged by that Act, the duty of delivering "a full and true account of all property

in respect whereof any such duty shall be payable," with all such particulars as the Commissioners may require. The date of delivery is on or before the 1st October in each year. An account of increment value must now be delivered by all bodies, chargeable with the said stamp duty or not (with the exception provided for in Sub-section (5), p. 96, *infra*).

Contain an Account of the Increment Value.—*I.e.* the amount by which the site value (Section 25, Sub-section (4)) exceeds the original site value as ascertained under Sections 25 to 32. The expense of this account will presumably fall on the body furnishing the account as it is only the original valuation which is paid for by the Commissioners.

Save as in this Act is hereafter provided.—*Cf.* Sub-section (5), p. 96.

(3) The provisions of sections thirteen to eighteen, of sub-section (1) of section nineteen, and of section twenty of The Customs and Inland Revenue Act, 1885 (with the exception of any provisions relating to appeals), shall have effect for the purpose of the assessment and recovery of increment value duty as they have effect for the purpose of the duty charged under section eleven of that Act:

Provided that increment value duty may, if the body corporate or unincorporate chargeable therewith so desire, be paid by fifteen equal yearly instalments, and the first instalment shall be due immediately after the assessment of the duty.

Any part of any duty so payable by instalments may be paid up at any time.

The Provisions, &c.—The effect of these sections as applied to increment value duty by this section is that it is considered to

be a stamp duty and placed under the care and management of the Commissioners (Section 13 of The Customs and Inland Revenue Act, 1885); that it is a first charge on all the property in respect of which it is payable while such property shall remain in the possession or under the control of the body chargeable or any party or parties acquiring the same with notice of any duty being in arrear, and every such body and every accountable officer (as defined in Section 12) is answerable for the payment of the duty to the full extent thereof (Section 14). An account is to be delivered on each periodical occasion as is prescribed in Section 6, Sub-section (2), *supra* (Section 15). Every accountable officer who pays the duty may recoup himself out of any moneys of the body which shall be held by him or come to his hands (Section 16). The Commissioners may accept the account rendered as the basis of their assessment of duty or may have another account taken, and their assessment thereon is by Section 33, Sub-section (1), of the present Act, subject to appeal (Section 17, Sub-section (1)). If the duty so assessed exceeds the duty assessable under the account rendered to the Commissioners, and there is no appeal against the Commissioners' assessment, the Commissioners have power, having regard to the merits of the case, to charge the whole or any part of the expenses incident to the taking of the second account on any funds liable to such duty as an addition to the duty (Section 17, Sub-section (2)); *sed quære* whether this provision is applicable: is it a "provision relating to appeals," and therefore excluded? It would seem that it is not, for it is a provision applicable when there is no appeal¹. The duty is payable immediately after assessment, notwithstanding any appeal (Section 17, Sub-section (3)). (The same query may arise so far as the words "notwithstanding any appeal" are concerned). There is a penalty upon every body and every accountable officer (as defined in Section 12) for wilful neglect to deliver the account required, amounting to £10 per cent. upon the amount of duty payable, and a like penalty for every month after the first month during which such neglect shall continue (Section 18, Sub-section (1)). and a like penalty for wilful neglect to pay the duty within twenty-one days after it is payable (Section 18, Sub-section (2)). The Commissioners have the same powers in relation to proceedings to enforce delivery of accounts,

¹ See Section 15, Sub-section (4), note, where Section 17 of the Act of 1885 is set out in full.

and in relation to the verification of accounts and the production and inspection of books and documents, as they have in relation to succession (and estate, see Finance Act, 1884, Section 8, Sub-section (1)) duty; and in the case of any proceeding in any Court for the administration of any property chargeable with increment value duty the Court shall provide out of any such property in its possession for the payment of any duty (Section 20).

Due Immediately After the Assessment, semble, whether there is an appeal or not. See above note on Section 17, Sub-section 3, of The Customs and Inland Revenue Act, 1885; and *cf.* Section 27, Sub-section (6), p. 16.

(4) Any increment value duty assessed by the Commissioners on an account delivered in accordance with this section shall, for the purpose of determining the amount of increment value duty to be collected on any subsequent occasion, be deemed to have been paid.

On an Account Delivered.—This, *semble*, must include an alternative account taken by the Commissioners under Section 17, Sub-section (1), of The Customs and Inland Revenue Act, 1885. See note. *supra*.

For the Purpose of Determining.—See the similar provision in the case of duty payable on a transfer or a grant of a lease, Section 4, Sub-section (4), p. 86; and for the words “deemed to have been paid” see Section 7, note, p. 100.

(5) Nothing in this section shall affect the collection of increment value duty on the occasion of the grant of any lease or the transfer on sale of the fee simple of any land or any interest in land by a body corporate or unincorporate, or oblige an account to be delivered of the increment value of any land on any periodical occasion, if, under the

subsequent provisions of this Part of this Act. increment value duty in respect thereof is not to be collected on that occasion.

Nothing in this Section, &c.—Such a body remains liable, like a private individual, if it sells or leases its land or interest; but the duty paid on such occasions is, of course, deducted from the duty payable on the periodical occasions and *vice versa*. See Section 3, Sub-section (1), p. 74.

Or Oblige an Account to be Delivered, &c.—See Section 7 (Agricultural land), Section 9 (Land used for games and recreation), Section 11 (Separate tenements), Section 35 (Rating authorities), Section 37 (Charitable bodies and registered societies), Section 38 (Statutory companies). If an account is not delivered, there can be no duty which is deemed to have been paid under Sub-section (4), *supra*, unless in the section granting the exemption words to that effect are expressly inserted, as in Sections 35 and 36. Cf. Section 7, note.

7. Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only:

Exemption
for
agricultural
land.

Provided that any value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, shall be treated as value for agricultural purposes only, except where the value for any such purpose exceeds the agricultural value of the land.

Increment Value Duty.—See Sections 1 and 2, p. 56.

Shall Not be Charged.—But the land remains subject to the original valuation (Section 26, Sub-section (1)), and must apparently be accounted for on the “occasions” on which increment value duty might be payable (see Sections 4 and 5).

With regard to the "periodical occasions" it would seem that on these an account need not be delivered (Section 6, Sub-Section (5)); but here, as in other places, doubt is caused by the use of the varying expressions "is not to be collected," "shall not be charged."

The interpretation of this section will probably give rise to many difficulties, and it will be well to summarise the whole of the provisions of the Act in so far as agricultural land is concerned in order to appreciate the position in which such land stands.

"Agriculture" is defined as including the use of land as meadow or pasture land, or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments (Section 41). "Agricultural purposes" must be construed with reference to the same definition. The definition is not exhaustive, and reference may be made to the definition in The Agricultural Rates Act, 1896 (59 & 60 Vict. c 16), Section 9, bearing in mind, of course, the different objects of the two Acts.¹ ("The expression 'agricultural land' means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse.")

The expression "agricultural land" may, for the purpose of the present Act, probably be taken to mean land in fact used at the time for agricultural purposes, including those stated in Section 41, even though used for other purposes so long as they do not exclude its use for agricultural purposes. In the case of all such land the Commissioners will, on the original valuation (see Section 26, Sub-section (1)), ascertain both (A) the "site value" of the land (Section 25, Sub-section (4)); and (B) the "value for agricultural purposes," which is not defined, but seems to be the amount which the fee simple of the land as it stands might be expected to realise in the open market, when sold to a willing purchaser who has no intention of building upon it, or using it for any purpose other than agriculture, and will therefore

¹ Cf. Ryde *The Law and Practice of Rating*, 2nd ed., p. 113.

only give the price which it is worth to him for agricultural purposes. This calculation is, it appears, to be made without any reference to the provisions of Section 25, Sub-section (4), as to the ascertainment of site value, or any of the deductions therein specified, for the deductions are intended to be to the advantage of the taxpayer (*cf.* the words "is proved to the Commissioners") and such as he would claim, whereas if applied to agricultural value they would, as will be seen, operate to his detriment, and therefore can hardly be forced upon him in the absence of specific words or a clear intention to that effect. Value (A) may be greater than, equal to, or less than value (B), and they may vary from time to time in their relation to each other.

On the happening of an occasion (Section 1) the two values will again be ascertained, the site value (A) in accordance with Section 2, which incorporates the deductions provided for in Section 25, Sub-section (4), the agricultural value (B) as before, without any such deductions. If and so long as value (B) is in excess of value (A), under Section 7 no increment value duty is chargeable, no matter how great the increment in value (B) may be shown to be. If, on the other hand, value (A), the site value, is or becomes in excess of value (B), the agricultural value, the duty is chargeable on the increment shown on the subtraction of the original value (A) from value (A) as shown on the "occasion." It is therefore to the interest of the owner that the agricultural value (B) should always be assessed as high as possible, and it is in his favour that in estimating such value no deductions are provided for.

It will thus be seen that if the site value (A) is or becomes in excess of the agricultural value (B), the duty is chargeable as if the land were not agricultural; and is chargeable on the whole increment from the original value (A) to the value (A) on the "occasion," although on the original valuation and on intermediate "occasions" the land had a value (B) higher than (A).

In the case of the grant of a lease or the transfer, &c. (Section 1, Sub-sections (a), (b), and (c)) of an interest in the land, the duty is, as has been seen (Section 3, Sub-section (3)), a portion of the duty on the whole increment value, calculated in accordance with the proportion in value which the lease or interest bears to the fee simple.

No Higher Value.—*I.e.* in order to obtain the exemption the land must have no higher value for any other purpose whatsoever than its agricultural value. Difficulties of fact will arise in deciding whether an offer to an owner of a higher than the agricultural value when the land is wanted, *e.g.* by a water company or a racecourse company, constitutes such a demand as to give that land a higher than agricultural value.

In this section there is no proviso that increment value duty not charged shall be deemed to have been paid, though such a proviso appears in Section 3, Sub-section (5), and Section 8, Sub-section (5). This omission may give rise to some difficulty, for, *primâ facie*, the result appears to be that if on the original valuation value (B) exceeds value (A), and continues to exceed it on the first occasion, but on a second occasion value (A) has overtaken and passed value (B), then duty is payable on the basis of the whole increment in value (A), since the original valuation, without any allowance for any increment in that value between the original valuation and the first occasion, the duty on which, but for the exemption in this clause, would have been charged. This view is supported by the fact that the proviso is specifically inserted in the case of the exemptions granted in Sections 8, 35, and 36. But it is submitted that possibly the true explanation may be stated thus: The words "increment value duty shall not be charged" do not mean that it shall not be assessed. It will be assessed on the first occasion under Sections 2, 3, 4, 5, and 6, and in the ordinary course would be collected under Sections 4, 5, and 6. But on the owner establishing that the agricultural value is higher than the site value he secures immunity from the charging or collection. It is not that these sections are entirely ousted; the duty is assessed under them, and the provisions in Section 4, Sub-section (4), and Section 6, Sub-section (4), remain operative (the omission of such a provision from Section 5 being probably intentional), and it is only when the time comes to charge and collect it that Section 7 takes effect. On the second occasion it is assessed as before under these sections, but it is then found that the site value A exceeds the agricultural value B. This time, therefore, Section 7 does not come into operation. The fact that the land had once an agricultural value higher than its site value is an incident in its history which has entirely dropped out, and the assessment and collection of the duty take their ordinary course, *i.e.* Section 4, Sub-section (4).

and Section 6, Sub-section (4). have their full effect, for the words of those sections are "any duty assessed . . . under (on an account delivered in accordance with) this section," and on the first occasion the duty was, in fact, assessed, and therefore is "deemed to have been paid."

To put it shortly, Section 7 appears to touch only the charging or collection of the duty without interfering with the rest of the machinery of the Act.

The point, however, is open to very considerable doubt, as the words "shall be deemed to have been paid," or similar words, seem to be inserted or omitted in a manner in which it is not easy to find any consistent principle. But it may be noted that in Section 9 their omission is intentional, and as on periodical occasions under that section no account is to be delivered of the increment value of land on which duty is not to be collected (Section 6, Sub-section (5)), the omission is not made good by referring back to Section 6, Sub-section (4), for by this latter sub-section the duty is only deemed to have been paid if it is assessed "on an account delivered in accordance with this section." See also Section 14, Sub-section (4), and Sections 35, 36, 37, 38, notes.

Provided that Any Value, &c.—There is some ambiguity in the words "or for other purposes dependent upon, &c.," but they appear to mean that the sporting purposes as well as the other purposes must be dependent upon the use of the land for agricultural purposes. "Dependent upon its use" includes, it is conceived, "dependent upon its not being used for anything else."

The question of racecourses may cause some difficulty, but such a use is probably a use for a business purpose, taking the land out of the category of agricultural land altogether. (See Section 16, Sub-section (2), definition of undeveloped land.) The distinction between sport and business is one which will in many cases not be easy to draw.

Cases will no doubt arise of land covered with water which is or may be let for fishing or boating. Such land is presumably included in the word "land" whenever used, and its value (if any exists) will in most cases be a value for sporting purposes.

The general effect of this proviso is that if land is or can be sold or let for sporting or other purposes which do not involve its

being no longer used for agricultural purposes as defined by the Act (Section 41), then, if the price or rent shows a value equal to or less than the agricultural value (B) as ascertained in the manner described above, that land is exempt from increment value duty, but only so long as such sporting or other value does not exceed the value (B).

Exemption
of small
houses and
properties
in owner's
occupation.

8. (1) Increment value duty shall not be charged on the increment value of any land, being the site of a dwelling-house, where immediately before the occasion on which the duty is to be collected the house was, and had been for twelve months previously, used by the owner thereof as his residence, and the annual value of the house, as adopted for the purpose of income tax under Schedule A, does not exceed—

- (a) In the case of a house situated in the administrative county of London, forty pounds; and
- (b) In the case of a house situated in a borough or urban district with a population according to the last published Census for the time being of fifty thousand or upwards, twenty-six pounds; and
- (c) In the case of a house situated elsewhere, sixteen pounds.

Shall Not be Charged.—But on subsequent occasions it shall be deemed to have been paid. See Sub-section (5), *infra*; Section 3, Sub-section (1); and Section 7, notes.

Site.—For the definition see Sub-section (4) (b), *infra*.

Dwelling-house.—Cf. Section 16, Sub-section 2, note. For the meaning of this, reference should be made to *eases on Inhabited House Duty*, *The Representation of the People Acts*, 1832 (Section 27); 1867 (Section 3); 1884 (Section 3); and the use of the word “dwelling-house” in the criminal law (*cf.* Archbold, 23rd ed., p. 625 *et seq.*).

Immediately.—This, it would seem, must be strictly construed, and any but the shortest period of time between the occupation by the owner and the happening of the occasion will involve loss of this exemption.

Used . . . as his Residence.—Presumably a *bonâ fide* occupation of and living in the house by the owner, and, in ordinary circumstances, his family, will be required, but mere temporary absence while the house still remains his chief place of abode will presumably not affect his right to the exemption. The words exclude any owner who lets the land or house. The question is one of fact (*cf.* note “dwelling-house,” *supra*).

Owner.—See definition in Sub-section (4) (a), *infra*. This definition is in addition to the general definition in Section 41. The effect is to extend the exemption, in addition to the cases where the land is held by the freeholder or lessee or under-lessee under a lease with fifty years unexpired (as specified in Section 41), also to the case where it is held by a lessee under a lease originally granted for a term of fifty years or more, however short may be the term unexpired; but in this last case it is to be noted that the exemption only applies to the leasehold interest referred to (Sub-section (4) (a)).

Annual Value.—For the case where under Schedule A the dwelling-house is valued together with other land see Sub-section (3), *infra*.

(2) Increment value duty shall not be charged on the increment value of any agricultural land where, immediately before the occasion on which the duty is to be collected, the land was, and had been for twelve months previously, occupied and cultivated by the owner thereof, and the total

amount of that land, together with any other land belonging to the same owner, does not exceed fifty acres, and the average total value of the land does not exceed seventy-five pounds per acre :

Provided that the exemption under this provision shall not apply to any land occupied together with a dwelling-house the annual value of which, as adopted for income tax under Schedule A, exceeds thirty pounds.

Shall Not be Charged.—See note to Sub-section (1).

Agricultural Land.—See Section 7, notes, p. 97.

Immediately.—See note to Sub-section (1).

Occupied and Cultivated.—Cf. the use of the word “occupier” in relation to rating (see *e.g.* Ryde, *The Law and Practice of Rating*, 2nd ed., pp. 10 and 11). The main object of the words “occupied and cultivated” in the present case is to exclude the owner who lets the land.

Owner.—See note to Sub-section (1).

Total Value.—See Section 25, Sub-sections (1) and (3), pp. 37, 41.

Of the Land.—*I.e.* the land whose value is under consideration on the particular occasion in question.

Dwelling-house.—For the case where, under Schedule A, the dwelling-house is valued together with other land see next sub-section.

The general effect of this sub-section is that if on an occasion the land the dealing in which (or the dealing in any interest in which) has caused the occasion is “agricultural” (see notes to Section 7), and comes within the terms of this sub-section, and is not occupied together with a dwelling-house of an annual value of more than thirty pounds, then the fact that the site value exceeds the agricultural value (Section 7) may be disregarded ; no duty is payable, however high the site value may be.

(3) Where a dwelling-house is valued for the purposes of income tax under Schedule A together with other land, and it is necessary for the purpose of this section to determine the annual value of the dwelling-house, the total annual value shall be divided between the dwelling-house and the other land in such manner as the Commissioners may determine.

Total Annual Value.—"Total," as used here, has no technical meaning, but is used as in Sub-section (2), *supra*, in the expression "total amount."

May determine.—The determination of the Commissioners is subject to appeal (Section 33, Sub-section (1)), p. 26.

(4) For the purposes of this section—

(a) The expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more; but in such a case nothing in this section shall prevent the collection of increment value duty so far as it is payable in respect of any other interest in the land other than that leasehold interest; and

(b) The site of a dwelling-house shall include any offices, courts, and yards, and gardens not exceeding one acre in extent, occupied together with the dwelling-house.

Owner.—See Sub-sections (1) and (2), *supra*.

Site of a Dwelling-House.—See Sub-section (1), *supra*.

(5) Any increment value duty which would, but for this section, be charged shall, for the purpose of the provisions of this Act as to the collection of the duty, be deemed to have been paid.

See notes to Sub-section (1), *supra*; and *cf.* the similar provisions in Section 3, Sub-section (5); Section 4, Sub-section (4); Section 6, Sub-section (4); and for its omission in Section 7 see note to that section.

Special
provision
for
increment
value duty
in the case
of land used
for games
and
recreation.

9. Increment value duty shall not be collected on any periodical occasion in respect of the fee simple of, or any interest in, any land which is held by any body corporate or unincorporate, without any view to the payment of any dividend or profit out of the revenue thereof, *bonâ fide* for the purpose of games or other recreation, if the Commissioners are satisfied that the land is so used under some agreement with the owner which as originally made could not be determined for a period of at least five years, or under other circumstances which render it probable that the land will continue to be so used, without prejudice, however, to the collection of the duty on any other occasion.

Shall Not be Collected.—*Cf.* Section 6, Sub-section (5). No account of the increment value of land or any interest in land held in accordance with the present section need be delivered on any periodical occasion. There is, therefore, no “increment value duty assessed . . . on an account delivered” within Section 6, Sub-section (4), with the consequence that increment value duty which would, but for the present section, be payable is not “deemed to have been paid” and if the body sells or grants a lease of the land or sells any interest in the land increment value duty becomes payable (the exemption in the present

section being limited to "periodical occasions") on the increment value (see Section 2, Sub-sections (a) and (b)) without any deduction for duty which might have been, but was not payable on previous periodical occasions. The omission of the words "shall be deemed to have been paid" here seems to be intentional. Cf. Section 7, note, p. 100.

Fee Simple of or any Interest in.—See Section 1, notes, p. 56, and Section 41.

Body Corporate or Unincorporate.—See Section 1, Sub-section (c), notes; and Section 6, p. 92.

Without any View to the Payment, &c.—This excludes, of course, any sporting club owned by a body of shareholders or partners who make any profit whatsoever therefrom. There would seem, however, to be a distinction drawn between the bodies contemplated in this section and bodies referred to in Section 37, Sub-section (2), the words there being "precluded from dividing any profit amongst their members." Possibly, therefore, a body under the present section may make an exceptional or occasional division of profits without losing the benefit of the exemption, provided that the body exists *bonâ fide*, "without any view to" such division. The question is one of fact, as is the question of the *bona fides* of the use of the land for games or other recreation.

If the Commissioners are Satisfied, &c.—*Quære*, is the decision of the Commissioners subject to appeal? The terms of the Act leave some room for doubt. Under Section 33, Sub-section (1), p. 26, there is an appeal "except as expressly provided" against certain specified decisions of the Commissioners (which do not include the expression of "satisfaction" contemplated by this section), "or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act." The word "determine" thus appears to be used with special intent, and, wherever it appears, an appeal clearly lies (*e.g.* Section 3, Sub-section (1); Section 8, Sub-section (1)), if not under any of the specified headings of Section 33, Sub-section (1), at any rate under these last words, and *primâ facie* it would appear that where the word "determine" is not used no appeal would lie (*cf.* cases where the Commissioners are not mentioned but are clearly the body to decide, *e.g.* Section 8, Sub-section (1) "used by the owner as his residence").

But on the other hand in Section 17, Sub-section (3) (b), (the question whether access granted to woodlands, &c., is for the public benefit), in Section 17, Sub-section (3) (c), (the question whether the freedom of land from buildings is reasonably necessary in the public interest), the words used are "in the opinion of the Commissioners"; and it is nevertheless thought necessary to provide expressly that the "opinion" shall be final; while in Section 17, Sub-section (3) (d), there is a similar provision to that now under consideration ("if the Commissioners are satisfied, &c."), which is by inference clearly subject to appeal. It may, therefore, be assumed with some confidence that every decision of the Commissioners, whatever be the words used to describe it, is subject to appeal under the word "determine" unless there are express words to the contrary.

Under some Agreement.—Cf. Section 17, Sub-section (3) (d). The rest of the section provides some basis for estimating *bona fides*, the absence of any definite agreement being not necessarily conclusive against the right to exemption.

Owner.—See Section 1, note, and Section 41.

Provision as
to Crown
lands, &c.

10. (1) Any increment value duty in respect of the fee simple of, or any interest in, any land held by, or in trust for, His Majesty or any department of Government, which would have been collected on any occasion had it been held by a private person, shall for the purposes of the provisions of this Act as to the collection of increment value duty be deemed to have been paid.

The inference from this section seems clear that such land is subject to valuation both originally and on each occasion (except the periodical occasions), and, indeed, it is important to the scheme of the Act that this should be so, for Crown lands may be sold to subjects and subjects may hold leases of and other interests in such lands (see Section 26, Sub-section (1), note, p. 7). By Section 119 of The Stamp Act, 1891, "Except where express provision to the contrary is made by this or any other Act,

an instrument relating to property belonging to the Crown, or being the private property of the Sovereign, is to be charged with the same duty as an instrument of the same kind relating to property belonging to a subject." The present section is clearly an "express provision to the contrary." The other duties not being stamp duties, the Crown is exempt by the fact that it is not referred to.

Deemed to Have Been Paid.—Cf. Section 4, Sub-section (4); Section 6, Sub-section (4); Section 8, Sub-section (5); and Section 7, note.

(2) Neither section seventy-seven of The Crown Lands Act, 1829, nor section thirty-eight of The Post Office Act, 1908, nor any other enactment exempting from stamp duty any document made or executed on behalf of, or for the purpose of, the Crown or any Government department, shall apply so as to prevent increment value duty being collected on any instrument by which the transfer on sale of the fee simple of, or any interest in, any land, or the grant of any lease of any land, to the Crown or to any Government department, or to any officer on behalf of, or for the purposes of, the Crown or any Government department, is effected or agreed to be effected.

10 Geo. 4
c. 50.
8 Edw. 7
c. 48.

Section 77 of The Crown Lands Act, 1829.—This in effect exempted from liability to any stamp duty imposed by any Act or Acts then in force or "to be imposed by any future Act or Acts unless the same be specially subjected thereto in and by such future Act or Acts" all contracts, agreements, deeds, receipts, and other instruments for or in relation to the sale, purchase, or exchange of any estates, manors, lordships, messuages, land, tenements, rents, or hereditaments by the Commissioners of Woods under the powers and provisions of the Act, and all leases made under the Act.

Cf. Crown Lands Act, 1866 (29 & 30 Vict. c. 62), Section 10, applying the above provisions to the Board of Trade.

Section 38 of The Post Office Act, 1908 (8 Edw. VII. c. 48), is as follows:—

“Every deed, instrument, money order, bill, cheque, receipt, or other document, made or executed for the purpose of the Post Office, by, to, or with, His Majesty or any officer of the Post Office, shall be exempt from any stamp duty imposed by any Act, past or future, except where that duty is declared by the document, or by some memorandum endorsed thereon, to be payable by some person other than the Postmaster-General, and except so far as any future Act specifically charges the duty.”

Special
provision as
to flats.

11. Where a building is used for the purpose of separate tenements, flats, or dwellings, the grant of a lease of any such separate tenement, flat, or dwelling, and the transfer on sale or passing on death of any lease of any such separate tenement, flat, or dwelling, shall not be an occasion on which increment value duty is to be collected under this Act, nor shall duty be collected on any periodical occasion from a body corporate or unincorporate where the interest held by the body is only a leasehold interest in any such separate tenement, flat, or dwelling.

Separate tenements, flats, or dwellings.—For the meaning of these words reference may usefully be made to the cases in relation to rating (see Ryde, *The Law and Practice of Rating*, 2nd ed., p. 31). See also Revenue Act, 1903 (3 Edw. VII. c. 46), Section 11, for a similar use of the words “separate dwellings.” It must be noted that the exemption in this section is only applicable in the case of the grant, transfer, or passing of a “lease.”

As in Section 7, there is no provision that the duty not collected is "to be deemed to be paid"; but the present case differs from other exemptions in that the grant, &c., does not even constitute an "occasion." No duty will therefore be assessed at all.

12. A person shall not be entitled to claim any deduction for the purpose of ascertaining the site value of any land on any occasion on which increment value duty becomes payable if the deduction is one which could have been, but was not, claimed for the purpose of ascertaining the original site value of the land.

Provision
as to
claims for
deductions.

See for the bearing of this section Section 2. note, p. 71, *supra*.

Any Deduction.—This clearly means any particular kind of deduction; not that the value attributable to the ground for the deduction is to be taken as fixed, regardless of any intermediate increase of that value. The increased value could not have been claimed at the original valuation for the reason that it did not exist.

CHAPTER IV.

REVERSION DUTY

(SECTIONS 13 TO 15).

SUMMARY OF THE SECTIONS.

REVERSION duty is a duty payable on the determination of any lease of land (subject to the exceptions set out below) at the rate of one pound for every complete ten pounds of the value of the benefit accruing to the lessor by reason of the determination of the lease (Section 13, Sub-section (1)).

The value of the benefit accruing is found by taking the total value of the land at the time of the determination of the lease, deducting such part of that value as is attributable to works and capital expenditure executed and incurred by the lessor and all compensation payable by the lessor, and then deducting from the sum so found the total value of the land at the time of the grant of the lease, calculated on the basis of the consideration for the lease; and, if the lessor is himself a lessee, he pays a proportion of the whole duty corresponding to the relative value of his leasehold interest as compared with the value of the fee simple (Section 13, Sub-sections (1) and (2)).

The duty is recoverable from the lessor (Section 15, Sub-section (1)), who must, on the determination of the lease, deliver particulars of the land and his estimate of the benefit accruing (Section 15, Sub-section (2)).

Exemptions are provided for as follows:—

No duty is charged where the reversion was purchased before 30th April, 1909, and the lease determines within forty years of the date of the purchase, unless it is determined within such period by agreement between the lessor and lessee not contained in the lease, and would not have determined within that period apart from such agreement (Section 14, Sub-section (1)).

No duty is charged on the determination of a lease of land which is at the time of the determination agricultural land (Section 14, Sub-section (2)).

No duty is charged on the determination of a lease the original term of which did not exceed twenty-one years (Section 14, Sub-section (2)).

No duty is charged where the interest of the lessor expectant on the determination of the lease is a leasehold interest which does not exceed twenty-one years (Section 14, Sub-section (2)).

When a lease is determined by agreement before the expiration of its term, and a fresh lease is granted to the lessee the term of which extends at least twenty-one years beyond the date on which the original lease would have expired, an allowance (not to exceed fifty per cent. of the whole duty) is made in respect of the unexpired portion of the old lease (Section 14, Sub-section (3)).

When a reversion has been mortgaged before 30th April, 1909, and the mortgagee has foreclosed before the lease on which the reversion is expectant has determined, he is not liable to duty in excess of the amount by which the total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure (Section 14, Sub-section (5)).

Further, provision is made that increment value duty and reversion duty shall not be both paid in respect of the same increment (Section 14, Sub-section (4)).

No reversion duty is charged on the determination of a mining lease (Section 22, Sub-section (1)).

Reversion Duty.

13. (1) On the determination of any lease of ^{Reversion duty} land there shall be charged, levied, and paid, subject to the provisions of this Part of this Act, on the value of the benefit accruing to the lessor by reason of the determination of the lease a duty, called reversion duty, at the rate of one pound for every complete ten pounds of that value.

This duty is not in addition to the increment value duty (see Section 14, Sub-section (4)). p. 124.

Determination of any Lease.—See Section 1, notes, p. 58. and Section 41. It must be remembered that “the term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed . . . and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined” (Section 41). Determination means determination whether by effluxion of time or otherwise (*cf.* Section 14, Sub-section (3)). For mining leases see Section 22, Sub-section (1). They are dealt with separately in the provisions as to mineral rights duty, and no reversion duty is charged on their determination.

Land.—See Section 26, Sub-section (1), note (p. 7, *supra*).

The Value of the Benefit.—See Sub-section (2), *infra*.

Lessor.—See Section 41. It is the lessor who has to pay this duty (Section 15, Sub-section (1)).

The duty is not chargeable in respect of land held by a rating authority (Section 35, Sub-section (1)), or land held by a governing body constituted for charitable purposes while occupied and used by such body for the purposes of that body (Section 37, Sub-section (1)), or land held by a registered society or a company precluded from dividing profits, while occupied and used by such society or company for its purposes (Section 37, Sub-section (2)), or land held by a statutory company for its purposes (Section 38), or on Crown land, as the Crown is not mentioned.

For the deduction allowed for sums paid in respect of "betterment" see Section 36.

For the case of settled land see Section 39.

A mortgagee who is liable to pay any sum on account of reversion duty is entitled to add the amount, with costs and expenses, to his security (Section 39, Sub-section (4)).

Appeal.—All decisions under this section seem subject to appeal. See Section 33, Sub-section (1), and Section 9. note, p. 107.

(2) For the purposes of this section the value of the benefit accruing to the lessor shall be deemed to be the amount (if any) by which the total value (as defined for the purpose of the general provisions of this Part of this Act relating to valuation) of the land at the time the lease determines, subject to the deduction of any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease and of all compensation payable by such lessor at the determination of the lease, exceeds the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property), but, where the lessor is himself entitled only to a leasehold interest, the value of the benefit as so ascertained shall

be reduced in proportion to the amount by which the value of his interest is less than the value of the fee simple.

The Value of the Benefit.—Expressed as shortly as possible and in general terms the calculation is to be conducted as follows:—

1. First, the total value of the land at the time the lease determines must be found. This, by Section 25. Sub-sections (1) and (3), will be the amount which the fee simple, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise (*i.e.* gross value), less the amount by which the gross value would be diminished if the land were sold subject to the charges, burdens, and restrictions referred to in Section 25. Sub-section (3).
2. From the total value so found there must be deducted—
 - (a) Any part of such value which is attributable to works executed or expenditure of a capital nature incurred by the lessor during the term of the lease. When this is compared with the similar deduction provided for in the case of the ascertainment of site value (Section 25. Sub-section (4) (b)), it will be noted that the word “directly” is omitted before “attributable,” which seems to give the valuer a power in the present case to include more remote consequences of works and expenditure. It will also be noted that “by the lessor” is to be contrasted with “*bonâ fide* by or on behalf of or solely in the interests of any person interested,” which seems to restrict the works and expenditure to those actually executed and incurred by the lessor himself. But “lessor,” it is to be noted, includes the person for the time being entitled to the reversion (Section 41).
 - (b) All compensation payable by such lessor at the determination of the lease. Deduction of compensation payable in respect of agricultural land

(*e.g.* under The Agricultural Holdings Act, 1908, (8 Edw. VII. c. 28)), will not be necessary, for under Section 14, Sub-section (2), no duty is charged on the determination of the lease of any land which is at the time of the determination agricultural land.

3. The next step is to find the total value of the land at the time of the original grant of the lease, and the directions given are that this is "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings, or to expend any sums upon the property)". Reference must therefore be made to Section 32, which provides that "Where the value of any consideration for a . . . lease is to be determined . . . that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and, so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioners to be the capital value of that payment."

Apparently, when the value of the consideration for the lease is thus ascertained as on the date of its grant, the value of the fee simple on the same date is to be arrived at in some rough way by asking what would have been given for the fee simple of the land as it stood in the open market, &c. (as in Section 25, Sub-section (1), "gross value"), subject to the charges, burdens, and restrictions referred to in Section 25, Sub-section (3) ("total value"), at a time when a lease of the length of the lease under consideration was worth the amount ascertained as above.

With regard to the words in brackets the value of the covenants, &c., referred to is only to be included in cases where a nominal rent only has been reserved. It is presumably for the Commissioners to decide what is in fact a nominal rent.

4. The total value at the time of the grant is then to be subtracted from the total value at the determination

of the lease, subject to the deductions in Paragraph 2, the result being the "value of the benefit accruing." From this a further deduction is allowed of any sums paid in respect of "betterment" (Section 36).

5. Finally, if the lessor is himself entitled only to a leasehold interest it is necessary to find, as in Section 3, Sub-section (3), the proportion in value which his interest bears to the fee simple, and the amount of the benefit deemed to accrue to him will bear the same proportion to the whole amount of the benefit as ascertained above.

In addition to the difficulties which must arise in practice in attempting to arrive at a proportion between the value of a lease and the value of the freehold, the position will, of course, be greatly complicated by the attempt to ascertain such values and proportion as they stood, say, ninety-nine years ago.

Lessor.—See Section 41.

Incurred by the Lessor.—*I.e.* the person at the time of the expenditure entitled to the reversion (Section 41).

Works Executed and Expenditure of a Capital Nature.—*Cf.* Section 25, Sub-section (4) (b), p. 44, and note, "Value of the benefit," *supra*.

Total Value of the Land at the Time of the Original Grant.—"Total value" can, it would seem, only refer to the total value as defined in Section 25, Sub-section (3). *Cf.* note "Value of the benefit," *supra*.

Nominal Rent.—The decision of the Commissioners is subject to appeal, if the conclusion arrived at in the note to Section 9, p. 107, *supra*, is correct, that all decisions, whether described as "determinations" or not, are subject to appeal unless otherwise provided. But the decision on the present point is probably also subject to appeal, as incidental to a determination of total value under the first heading in Section 33, Sub-section (1), p. 26, or as incidental to the assessment of the consideration on any lease under the fourth heading of that sub-section.

Covenant or Undertaking to Erect Buildings, &c.—*Cf.* Section 32, Sub-section (2), p. 24.

But where the Lessor is himself entitled, &c.—Cf. Section 3, Sub-section (3).

Interest, Fee Simple.—See Section 41.

Exemptions
from
reversion
duty, and
allowances.

14. (1) Where, in the case of a reversion to a lease purchased before the thirtieth day of April nineteen hundred and nine, the lease on which the reversion is expectant determines within forty years of the date of the purchase, no reversion duty shall be charged under this Part of this Act on the determination of the lease: Provided that this exemption shall not apply where the lease is determined within forty years by agreement between the lessor and the lessee, whether express or implied, not contained in the lease itself, unless the lease would, apart from any such agreement, have determined within that period.

This exemption may be briefly explained in its simplest form as follows:—A originally leased the land to B. Before 30th April, 1909, A sells his reversion to C. Within forty years of the date of the purchase the lease determines otherwise than by agreement between the parties not contained in the lease itself. C need not pay any reversion duty. It is possible—though the point is doubtful—that if a benefit in fact has accrued to him he may have to deliver an account under Section 15, Sub-section (2), p. 127, *infra*, although not liable to duty. In order to ascertain whether any benefit has accrued to him he must calculate that benefit as from the date of the original grant of the lease, not from the date when he bought the reversion. There is no provision for any calculations starting from this latter date, but only the provision in Section 14, Sub-section (4), by which credit is to be given, in cases where duty is chargeable, for payments made in respect of increment value which is identical with the benefit or any part of the benefit (see Section 14, Sub-section (4), *infra*).

Lease.—See Section 41. It must be particularly borne in mind that the term of a lease, when the lease contains an obligation to renew, is deemed to include the period for which the lease may be renewed, and a lease renewed in pursuance of such an obligation is not on its renewal deemed to be determined. Any arrangement by which the lessee does not exercise his option, but is to get a new lease after a short interval would probably come under the prohibition contained in the proviso (see note, "Provided that," *infra*).

Purchase.—This word is here used for the first time, and, like "transfer on sale," is not defined (*cf.* Section 1 (*a*), note). Both terms seem to include a foreclosure of a mortgage.

Provided that, &c.—The proviso is no doubt intended to cover the case of attempts to secure the exemption by collusive determination of the lease.

Decisions of the Commissioners under this sub-section are probably subject to appeal under the general words at the end of Section 33, Sub-section (1). See Section 9, note, p. 56.

(2) No reversion duty shall be charged on the determination of the lease of any land which is at the time of the determination agricultural land, nor on the determination of a lease, the original term of which did not exceed twenty-one years, nor shall reversion duty be charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed that number of years.

Determination, Lease.—See notes to Section 13, Section 14, Sub-section (1), and Section 41.

Any Land which, &c.—Clearly the lease may include other land which is not agricultural without affecting the exemption granted to agricultural land. In such a lease there will have to be apportionment of the benefit derived from the agricultural part of the land.

Agricultural Land.—This appears to mean land in fact used for agricultural purposes (including the purposes specified in Section 41). See Section 7, note, p. 98.

The Original Term of Which, &c.—“Original term” is ambiguous in view of the definition of “lease” in Section 41. By that definition the term of a lease containing an obligation to renew includes the period for which it may be renewed. “Original term” might therefore mean the term without such extended period. On the other hand, original term may mean the term as expressed in the lease, including the extended period. The latter appears to be the true interpretation. See next sub-section, “Expiration of the term.”

Where the Interest of the Lessor, &c.—Presumably the time from which the residue of the leasehold interest of the lessor is to be calculated is not the date of the termination of the sublease as expressed therein, but the date of its actual termination. The lessor, for instance, might have only twenty years of his own lease left if the sublease expired by effluxion of time, and would, therefore, pay no duty; but if for any reason the sublease terminated ten years earlier, leaving the lessor with thirty years of his own lease, it would appear that he would then be liable to the duty (*i.e.* a proportionate part under the last paragraph of Section 13, Sub-section (2)).

Decisions of the Commissioners under this section are probably subject to appeal. See note to last sub-section.

Delivery of Account.—See Section 15. Sub-section (2), note.

(3) Where a lease of any land is determined before the expiration of the term of the lease by agreement between the lessor and the lessee, whether express or implied, and a fresh lease of the land is then granted to the lessee the term of which extends at least twenty-one years beyond the date on which the original lease would have expired, the Commissioners shall make an allowance in respect of the reversion duty payable of

two and a half per cent. of the duty for every year of the original term of the lease which is unexpired when the lease is determined, and any sum so allowed shall be treated as having been paid:

Provided that the allowance shall not exceed fifty per cent. of the whole duty payable.

“*Lease*,” “*Determined*.”—See Section 13, Sub-section (1), and Section 41.

Expiration of the Term of the Lease.—Cf. the expressions “original lease” and “original term,” *infra*. In all three expressions the term seems to mean the term expressed in the lease; which affords some guidance in fixing the meaning of “original term” in Section 14, Sub-section (2), *supra*.

Fresh Lease is then Granted.—The word “then” shows that there must only be a short interval of time before the grant of the fresh lease, if not that the determination of the first lease must have been agreed upon for the purpose of the grant of the second, and as part of the same transaction.

To the Lessee.—*I.e.* the same lessee. There can be little doubt that the allowance cannot be claimed in the case, for instance, of a person taking over the business of the old lessee, even though the whole transaction is substantially one.

The Date on Which, &c.—The provisions of Section 41 as to a lease with an obligation to renew must be read with this. The date referred to is the end of the extended term.

An Allowance, &c.—The allowance will be two and a half per cent. of the duty payable, multiplied by the number of complete years (not exceeding twenty) between the date of the surrender and the date when the old lease would have expired by effluxion of time, including any period for which the lessor could have, by its terms, been compelled to renew it.

Treated as having been paid.—*I.e.* when there is any question under the next sub-section of crediting payment of reversion duty in assessing increment duty (see Section 14, Sub-section (4)).

Appeal lies against the Commissioners' refusal to make this allowance, or to allow the amount claimed (Section 33, Sub-section (1)).

(4) Where on any occasion on which increment value duty is due in respect of any increment value it is proved to the satisfaction of the Commissioners that reversion duty has been paid in respect of any benefit accruing to a lessor, or part of such a benefit, which is identical with the increment value, such sums as the Commissioners determine to have been paid in respect of the benefit or part of the benefit shall be treated as being also a payment on account of increment value duty; and where, on any occasion on which reversion duty is due in respect of any benefit accruing to a lessor, it is shown to the satisfaction of the Commissioners that increment value duty has been paid on any increment value which is identical with that benefit or any part of that benefit, such sums as the Commissioners determine to have been paid in respect of that value shall be treated as being also a payment on account of the reversion duty in respect of that benefit or part of a benefit.

Occasion.—See Section 1, Sub-sections (a), (b), and (c).

Increment Value Duty.—For “Increment value” see Section 2.

Proved to the Satisfaction of the Commissioners.—Subject to appeal either under heading “against the amount of any assessment of duty” in Section 33, Sub-section (1), or, *semble*, under the general words at the end of that section. See Section 9, note, p. 107.

In respect of any Benefit, &c.—Cf. Section 14, Sub-section (3), note, “treated as having been paid.”

The provisions of this section are intended to prevent the same increment from being charged twice with duty, *e.g.* with increment value duty on an “occasion” (Section 1, Sub-sections (a), (b), (c)), and subsequently with reversion duty on the determination of a lease when that increment is or forms part of the benefit accruing to the lessor, and *vice versa*. For instance, suppose that A leases the land to B for ninety-nine years in 1850, and in 1920 sells his reversion to C. The sale being an occasion, A pays increment value duty on any increment in the site value shown at the date of the sale. C paid for the reversion in 1920 its value at that date; but when in 1949 the benefit accruing to him is ascertained, it is calculated as if he reaped the whole of the “benefit” since 1850. This he obviously did not, so he is entitled to credit for what was paid as increment value duty by A in 1920. Then, again, the reversion having fallen in to C in 1849, he may sell the fee simple, or grant another lease of the land, or die, in say, 1955. Increment value duty is then calculated (see Section 2) by comparing the site value in 1955 with the original site value as in April, 1909 (Sections 25 and 26). Again, a part of this increment may have already borne reversion duty in 1949; and C is entitled to credit for such part of the reversion duty then paid as is attributable to the increment which took place between 1909 and 1949.

Credit is given in each case for reversion duty which is “treated as having been paid” under Section 14, Sub-section (3) (note the omission of these words in Section 14, Sub-sections (1) and (2)); and with increment value duty which is “deemed to have been paid” under Section 4, Sub-section (4), Section 6, Sub-section (4), and Section 8, Sub-section (5). See also Section 7, note, p. 100.

(5) Where a reversion has been mortgaged before the thirtieth day of April, nineteen hundred and nine, and the mortgagee has foreclosed before the lease on which the reversion is expectant determines, the mortgagee shall not be liable to pay reversion duty in excess of the amount by which the

total value of the land at the time of the determination of the lease exceeds the amount payable under the mortgage at the date of the foreclosure.

Where a Reversion, &c.—A simple instance is as follows:—In 1908 A mortgages to B his reversion to a lease which expires in 1930 for £20,000. In 1920 B forecloses, there being then due for principal, interest, and costs ("the amount payable under the mortgage at the date of the foreclosure"), say £22,500. B is now the owner of the reversion, and it is fairly clear that the foreclosure is an "occasion" under Section 1 ("transfer on sale"), and a "purchase" under Section 14, Sub-section (1). In 1930, when the lease determines, B is liable as the lessor to reversion duty (subject to credit under Section 14, Sub-section 4, for increment value duty paid or deemed to have been paid on the foreclosure in 1920). Suppose that the total value in 1930 is £23,000, and that after all credits have been allowed, the reversion duty calculated under Section 13, Sub-section (1) is £1000; B is not liable to pay more than £500, the difference between the total value at the time of the determination of the lease and £22,500, the amount payable under the mortgage at the date of the foreclosure.

It has been stated above that a foreclosure is included in "transfer on sale." Both on the words of this section and by the general scheme of the Act it would appear that this must be so, for at that point the mortgagee becomes an owner or person interested and subject as such to all the liabilities imposed by the Act, and it is therefore important to him that increment duty shall be either paid or deemed to have been paid (Section 4, Sub-section (4)); otherwise in paying reversion duty he will be paying on an increment from which he has not benefited. (See Section 4, Sub-section (1), note.)

Recovery of
reversion
duty.

15. (1) Reversion duty shall be recoverable from any lessor to whom any benefit accrues from the determination of a lease as a debt due to His Majesty, but shall rank *pari passu* with all other debts due from such lessor.

Lessor.—See definition in Section 41.

Shall rank pari passu.—*Cf.* Section 5, p. 90.

(2) Every lessor shall, on the determination of a lease on the determination of which reversion duty is payable under this section, deliver an account to the Commissioners setting forth the particulars of the land and the estimated value of the benefit accruing to the lessor by the determination of the lease.

Lessor.—See Section 41.

Determination, Lease.—See Section 13, notes, and Section 41.

On the Determination of which Reversion Duty is Payable under this Section.—The words “under this section” raise some doubt. They might be taken to confine attention to this section only, when the liability to account is to be ascertained; the result of which would be that an account must be delivered by “any lessor to whom a benefit accrues” (Section 15, Sub-section (1)), regardless of the fact that he may be entitled to total exemption under Section 14, Sub-section (1) or (2). The alternative is in effect to disregard the words “under this section,” and read the words “duty is payable” together with Section 15, Sub-section (1), as in the ordinary course they would be read, *i.e.* subject to the exemptions in Section 14, Sub-sections (1) and (2); in which case lessors exempt under those sub-sections need deliver no account at all, and (subject to the penalty under Sub-section (3), *infra*, if the Commissioners ultimately discover the lease and it proves that duty was payable) they are the judges in their own case of all points which might arise under Section 14, Sub-sections (1) and (2). The point, however, may be of little practical importance; there is no penalty for not delivering an account where no duty is payable, as the only penalty is a percentage of the amount payable.

(3) If any person who is under an obligation to deliver an account under this section knowingly fails to deliver such an account within the period of three months after the determination of the lease, he shall be liable to pay to His Majesty a sum not

exceeding ten per cent. upon the amount of any duty payable under this section, and a like penalty for every three months after the first month during which the failure continues.

Under an Obligation.—See note to last sub-section.

Knowingly fails to Deliver.—*Cf.* Section 4, Sub-section (2), p. 82, and Section 6, Sub-section (3), note, p. 95. It is not clear why the word “knowingly” is used in the present section, while the word “wilfully” is used in Section 18, Sub-section (1), of The Customs and Inland Revenue Act, 1885 (incorporated by Section 6, Sub-section (3)), while in Section 4, Sub-section (2), neither word is used, and mere failure to present the instrument or particulars constitutes the offence. “Knowingly” is a word of much ambiguity, but it seems hardly likely that it will be held to negative the presumption that everybody knows the law. In Section 94 (“knowingly makes a false statement”) the same ambiguity does not appear.

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c. 51.

(4) Section seventeen of The Customs and Inland Revenue Act, 1885 (which relates to the power to assess duty according to accounts rendered, and to obtain other accounts), shall apply with respect to any account delivered under this section (with the exception of any provisions relating to appeals).

Cf. Section 6, Sub-section (3), note, p. 95. The section of The Customs and Inland Revenue Act, 1885, referred to is as follows:—

17. (1) It shall be lawful for the Commissioners to assess the duty upon the footing of any account rendered to them, or if dissatisfied with such account, to cause an account to be taken by any person or persons appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account [subject to appeal to a court in the same manner as in any case of succession duty as hereinafter provided].

- (2) If the duty so assessed shall exceed the duty assessable according to the account rendered to the Commissioners, and with which they shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the Commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account on any funds liable to such duty as an addition thereto and part thereof, and to recover the same accordingly; but if there shall be an appeal against such assessment, then the payment of such expenses shall be in the discretion of the court (see note, *infra*).
- (3) The duty shall be payable immediately after the assessment and notwithstanding any appeal therefrom; [provided that in the event of the amount of the assessment being reduced by the order of the Court, the difference in amount shall be repaid with such interest (if any) as the Court may allow.]

The passages in brackets in Sub-sections (1) and (3) are excluded by the last words of Section 15, Sub-section (4), and in place of them the provisions of the present Act as to appeal apply (Section 33). Possibly the whole of Sub-section (2) and the words "notwithstanding any appeal therefrom" are also excluded, but they are probably not (see Section 6, Sub-section (3), note, p. 95).

CHAPTER V.

UNDEVELOPED LAND DUTY

(SECTIONS 16 TO 19).

SUMMARY OF THE SECTIONS.

UNDEVELOPED land duty is a duty payable annually at the rate of one halfpenny for every pound of the site value of undeveloped land (Section 16, Sub-section (1)).

Land is undeveloped if it has not been developed by the erection of dwelling-houses, or glasshouses, or greenhouses, or buildings for the purposes of any business, trade, or industry other than agriculture, or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture (Section 16, Sub-section (2)).

When land, having been so developed or used, ceases to be so developed or used, it will, on the expiration of one year after its so ceasing, be treated as undeveloped (Section 16, Sub-section (2) (a)).

When, with respect to land included in any scheme of development, the owner or his predecessors in title have incurred expenditure on roads and sewers within the past ten years, such land, though not in fact developed, is to be treated as developed to the extent of one acre for each one hundred pounds of such expenditure, unless the land, after the date of the expenditure, having been developed, reverts to the condition of undeveloped land (Section 16, Sub-section (2) (b)).

The site value is the original site value, or the value ascertained on any subsequent periodical valuation under Section 28 (Section 16, Sub-section (3)), and in this site value minerals are not to be included (Section 16, Sub-section (4)). The duty is to be assessed and is payable at any time after 1st January of the year for which it is charged (Section 19), and it is charged for the financial year ending 31st March, 1910, and every subsequent year (Section 16, Sub-section (1)). It is recoverable from the owner for the time being, and to be borne by that owner, notwithstanding any contract to the contrary (Section 19). Provision is also made for its assessment and payment, in case of delay, after the expiration of the year for which it is charged (Section 19).

Provision is made for exemptions as follows:—

No duty is charged on any land of which the site value does not exceed fifty pounds per acre (Section 17, Sub-section (1)).

In the case of agricultural land, if the site value exceeds fifty pounds an acre, duty is only charged on the amount by which the site value exceeds the value for agricultural purposes (Section 17, Sub-section (2)).

No duty is charged on the site value of parks, gardens, and open spaces open to the public as of right (Section 17, Sub-section (3) (a)); of woodlands, parks, gardens, or open spaces to which reasonable access is enjoyed by

the public or the inhabitants of the locality, if that access is of public benefit (Section 17, Sub-section (3) (b)); of land kept free of buildings in pursuance of a definite scheme if such freedom from buildings is reasonably necessary, subject to an obligation not to build without the consent of the Local Government Board (Section 17, Sub-section (3) (c)); and of land *bonâ fide* used for games or recreation (Section 17, Sub-section (3) (d)).

No duty is charged on the site value of one acre of land (whatever its use) occupied with a dwelling-house, and five acres of gardens or pleasure grounds occupied with a dwelling-house, subject to a limit as to value (Section 17, Sub-section (4)).

Where agricultural land is at the time of the passing of the Act held under a tenancy originally created by a lease or agreement before 30th April, 1909, no duty is charged on the site value during the original term of such lease or agreement while the tenancy continues thereunder (Section 17, Sub-section (5)).

No duty is charged on the site value of agricultural land occupied and cultivated by the owner, subject to a limit as to value (Section 18).

Finally, provision is made for a reduction of the site value for the purposes of undeveloped land duty when increment value duty has been paid in respect of increment value (Section 16, Sub-section (3)).

Undeveloped Land Duty.

16. (1) Subject to the provisions of this Part of this Act, there shall be charged, levied, and paid for the financial year ending the thirty-first day of March, nineteen hundred and ten, and every subsequent financial year in respect of the site value of undeveloped land a duty, called undeveloped land duty, at the rate of one halfpenny for every twenty shillings of that site value.

Duty on
site value of
undeveloped
land.

For the Financial Year Ending, &c.—The duty on any particular piece of land will be assessed for 1909–10 as soon as the provisional valuation of that land is made, and will be payable two months after assessment (Section 19). (See Section 27, Sub-section (6), p. 15). For other years it is payable at any time after the 1st day of January of the year for which it is charged (Section 19). Any duty for the time being unpaid is recoverable from the owner (as defined in Section 41) for the time being, and must be borne by him notwithstanding any contract to the contrary (Section 19).

This duty is not to be paid by rating authorities (Section 35), or by governing bodies constituted for charitable purposes in respect of land held by them while it is occupied and used by them for their purposes (Section 37, Sub-section (1)); or by registered societies or by companies precluded from dividing profits in respect of land held by them while it is occupied and used by them for their purposes (Section 37, Sub-section (2)); or by statutory companies in respect of land held by them for the purposes of their undertakings (Section 38).

Site Value.—As ascertained in accordance with Section 25, p. 37. Any part of the site value which is due to the presence of minerals is to be disregarded for the present purpose. See Section 16, Sub-section (4), and Section 23, Sub-section (2).

For the deduction of sums paid in respect of “betterment” see Section 36.

For the general exemption of land of a site value of £50 an acre or less, and other exemptions, see Sections 17 and 18. *infra*.

(2) For the purposes of this Part of this Act, land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture :

Land is therefore "developed" and no undeveloped land duty is chargeable, if

- (1) It has been developed by the erection of dwelling-houses, glasshouses, greenhouses, or buildings for the purposes of any business, trade, or industry other than agriculture ;
- (2) If it is used in any other way *bonâ fide* for any business, trade, or industry other than agriculture.

For the meaning of "dwelling house" see Section 8, Sub-section (1), p. 103. The meaning of "buildings" has frequently been considered under, *e.g.* The Representation of the People Act, 1832, Section 27 (and *cf.* The Representation of the People Act, 1884, Section 7, Sub-section (7)); The Public Health Act, 1875, Section 157, Sub-section (2), and Section 159; The Lands Clauses Consolidation Act, 1845, Section 92; The Agricultural Rates Act, 1896, Section 1, Sub-sections (1) and (2) (a); and other Acts. But in construing the word in the present Act it is conceived that the words "developed by" must have a controlling effect: *i.e.* the mere erection of what, in doubtful cases, has been held to be a building for the purposes of other Acts, is not sufficient unless such "building" may be said to contribute to the "development" of the land. In view of the general object of the section a merely temporary erection which for other purposes might be a building (*e.g.* an advertisement hoarding) would probably be held not to be a building if it were merely a temporary user of land which otherwise remains "undeveloped."

It is to be noted that the words used are "has not been developed," which leaves a doubt as to the exact period in the

process of building at which land may be regarded as "having been" developed. It will also be a difficult question of fact to decide how much of any particular piece of land is developed by any particular dwelling-house or building. For the amount of land round a dwelling-house exempted from the duty see Section 17, Sub-section (4).

Business, Trade, or Industry other than Agriculture.—For the meaning of "agriculture" see Section 41 and Section 7, note, p. 98, *supra*. A farm will be a "dwelling-house," but farm buildings outside the limit of exemption provided for in Section 17, Sub-section (4), will be for agricultural purposes, and therefore will not constitute "development" of the land for the present purpose.

Or is Not Otherwise Used, &c.—The words business, trade, or industry seem wide enough to cover every occupation carried on, whether with a view to profit or not; but obviously there will be difficulties in deciding whether land is "developed" or not when some business, &c., is carried on upon it without substantially or at all interfering with its use for agricultural purposes.

Bona fide.—The decision as to this is one of fact, and clearly the use of the land for the purpose of evading the duty, though not conclusive, is an important element to be considered (*cf.* Section 9, and Section 17, Sub-section (3) (*d*)).

All decisions under this section seem to be subject to appeal. See Section 33, Sub-section (1), and Section 9, note, p. 107.

Provided that—

- (a) Where any land having been so developed or used reverts to the condition of undeveloped land owing to the buildings becoming derelict, or owing to the land ceasing to be used for any business, trade, or industry other than agriculture, it shall, on the expiration of one year after the buildings have so become derelict or the

land ceases to be so used, as the case may be, be treated as undeveloped land for the purposes of undeveloped land duty until it is again so developed or used ; and

See Sub-section (2), notes, *supra*.

The general meaning of this proviso is clear, but it involves difficult questions of fact, *e.g.* as to the exact date on which the buildings became derelict or the land ceased to be so used, the meaning of derelict, and the exact date at which development or such use begins again.

- (b) Where the owner of any land included in any scheme of land development shows that he or his predecessors in title have, with a view to the land being developed or used as aforesaid, incurred expenditure on roads (including paving, curbing, metalling, and other works in connexion with roads) or sewers, that land shall, to the extent of one acre for every complete hundred pounds of that expenditure, for the purposes of this section, be treated as land so developed or used although it is not for the time being actually so developed or used, but for the purposes of this provision, no expenditure shall be taken into account if ten years have elapsed since the date of the expenditure, or if after the date of the expenditure the land having been developed reverts to the condition of undeveloped

land, and in a case where the amount of the expenditure does not cover the whole of the land included in the scheme of land development, the part of the land to be treated as land developed or used as aforesaid shall be determined by the Commissioners as being the land with a view to the development or use of which as aforesaid the expenditure has been in the main incurred.

Owner.—See Section 41.

Any Scheme.—*Cf.* the words “any definite scheme” in Section 17, Sub-section (3) (c). It does not seem clear that the word “definite” makes any difference.

Shortly, the effect of this proviso is that if an owner spends money on roads or sewers with a view to the development of the land in question, or its use for the purposes of any business, &c. (see Section 16, Sub-section (2)), then, though no further steps are taken towards such development or use, he and his successors in title are for ten years after such expenditure (*semble*, after the last date on which such expenditure or any part of it was incurred) entitled to have one acre of such land treated as developed for every complete £100 so spent, unless the land was actually developed or so used, and has reverted, under proviso (a), *supra*, to the condition of undeveloped land; and if the land is, say, fifty acres, and only £1000 was spent, the ten acres chosen for exemption are to be chosen by the Commissioners (subject to appeal: see Section 33, Sub-section (1)) as those with a view to the development or use of which the expenditure was in the main incurred.

It is to be noted that only expenditure on roads or sewers gives rise to this exemption; but the roads or sewers need not be on the land exempted, so long as they were made with a view to its development. But in ascertaining the site value on which the duty is based, deduction will have already been made of all value directly attributable to works executed and expenditure of

a capital nature incurred (Section 25, Sub-section (4)(b)), which will include, but are wider than, the works and expenditure referred to in the present proviso. Expenditure on roads and sewers thus operates twice; in the first place it reduces or may reduce the site value taxable by the amount directly attributable to it; and in the second place it confers total exemption within the limits and on the conditions above stated.

(3) For the purposes of undeveloped land duty, the site value of undeveloped land shall be taken to be the value adopted as the original site value or, where the site value has been ascertained under any subsequent periodical valuation of undeveloped land for the time being in force, the site value as so ascertained:

Provided that where increment value duty has been paid in respect of the increment value of any undeveloped land, the site value of that land shall, for the purposes of the assessment and collection of undeveloped land duty, be reduced by a sum equal to five times the amount paid as increment value duty.

Original Site Value.—See Sections 25, 26, and 27.

For the deduction of payments in respect of “betterment” see Section 36.

Periodical Valuation.—In 1914, and every subsequent fifth year, a valuation of undeveloped land only is to be made for this purpose (see Section 28, p. 17).

Provided that, &c.—This proviso is very ambiguous. It might, for instance, have the following meaning:—A owns a piece of undeveloped land and sells it, in 1912, to B at a price which shows that the site value is, say, £10,000, the original site value (Sections 25, 26, and 27) having been £8000. To disregard, for the moment, the ten per cent. reduction provided for in Section 3,

Sub-section (5), which is deemed to have been paid. A pays increment value duty on the increment value of £2000 (see Sections 1 and 2), *i.e.* £400. For the purpose of the undeveloped land duty, B is entitled to deduct $£400 \times 5$, or £2000, from the site value on which he pays. Till the periodical valuation in 1914 is complete the site value in force is the original site value of £8000, which, therefore, is now to be reduced to £6000.

But it is not clear that this is the meaning of the proviso. It may mean that the site value on the next periodical valuation in 1914 (which, in view of the realised value as ascertained on the sale, will probably be at least £10,000) is to be reduced by £2000, so that for immediate purposes B's payments of duty are not affected. He continues to pay on the basis of the original site value of £8000 till 1914, but after 1914 does not pay on any increased value, for which he has already paid in the price he gave at the sale. This seems to be the more reasonable construction of the clause.

When land which is a unit of valuation is split up, the necessary apportionments can be made under Section 29, Sub-section (2). Part of the land, for instance, whose original site value, or periodical site value, is ascertained, may subsequently become developed, and it will be necessary to ascertain how much of the site value is attributable to the remainder which continues liable to duty.

(4) For the purposes of undeveloped land duty undeveloped land does not include the minerals.

See Section 16, Sub-section (1), note; and for the special provisions applicable to minerals see Sections 20 to 24.

17. (1) Undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed fifty pounds per acre.

Exemptions
from
undeveloped
land duty
and
allowances.

Site Value.—See Section 25, p. 37. and Section 16, Sub-sections (1) and (3).

The unit of valuation on the original valuation will be each piece of land under separate occupation, unless the owner has

required a further subdivision (Section 26, Sub-section (1), p. 6), and on subsequent periodical valuations (Section 28) the units will presumably be fixed by the apportionments and re-apportionments which have been made necessary by transactions in the meanwhile (Section 29), and here again (by the combined effect of Sections 26 and 28) the owner seems entitled to insist on the separate valuation of any part of any land. All decisions of the Commissioners are apparently subject to appeal (Section 33, Sub-section (1). and Section 9, note, p. 107).

Once the land is shown to be worth only £50 an acre or less in site value it is absolutely exempt from undeveloped land duty. The exemptions which follow in Section 17, Sub-sections (2), (3), (4), and (5), and Section 18, are therefore only required in the case of land of which the site value exceeds that amount.

(2) In the case of agricultural land of which the site value exceeds fifty pounds per acre, undeveloped land duty shall only be charged on the amount by which the site value of the land exceeds the value of the land for agricultural purposes.

Agricultural Land.—See Section 41 and Section 7, note, p. 98.

Site Value.—See Section 25, Sub-section (4), p. 44. and Section 16, Sub-sections (1) and (3), notes.

Exceeds Fifty Pounds per Acre.—All land of a site value of £50 or less is exempt (Section 17, Sub-section (1)).

The two values, "site value" and "value for agricultural purposes" will, if they differ, be ascertained on the original valuation (Section 26, Sub-section (1)), and on the periodical valuations (Section 28). The value for agricultural purposes (as is explained in the note to Section 7), appears to be the value which the fee simple of the land as it stands might be expected to realise in the open market when sold to a willing purchaser who has no intention of building upon it, or using it for any purpose other than agriculture, and will therefore only give the price which it is worth to him for agricultural purposes.

By the present sub-section, if the site value is, say, £80 an acre, and the agricultural value is, say, £60, undeveloped land duty is chargeable on only £20.

For other exemptions in the case of agricultural land see Section 17, Sub-section (5) (leases created before 30th April, 1909), and Section 18 (small holdings).

(3) Undeveloped land duty shall not be charged—

- (a) On the site value of any parks, gardens, or open spaces which are open to the public as of right; or

Site Value.—See Section 25, Sub-section (4), and Section 16, Sub-sections (1) and (3). Before it becomes necessary to consider whether this exemption applies, the site value must be shown to exceed £50 an acre (Section 17, Sub-section (1)).

Open to the Public as of Right.—The limits of this exemption are narrow; most parks and gardens which could be so described are held by rating authorities, who are exempt under Section 35. “The public” are clearly to be distinguished from “the inhabitants of the locality.” See next sub-section.

For definitions of “open spaces” see The Open Spaces Act, 1906 (6 Edw. VII. c. 25), Section 20 (“any land, whether enclosed or not, on which there are no buildings, or of which not more than one twentieth part is covered with buildings and the whole or remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied”): The Housing and Town Planning Act, 1909 (9 Edw. VII. c. 44), Section 73, Sub-section (4) (“any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground”). These definitions, however, are not authoritative for the purposes of the present Act.

- (b) On the site value of any woodlands, parks, gardens, or open spaces reasonable access to which is enjoyed by the public or by

the inhabitants of the locality (including access regularly enjoyed by any of the naval or military forces of the Crown for the purpose of training or exercise) where, in the opinion of the Commissioners, that access is of public benefit ; or

Site Value.—See Section 25, Sub-section 4, and Section 16, Sub-sections (1) and (3).

Before it becomes necessary to consider whether this exemption applies, the site value must be shown to exceed £50 an acre (Section 17, Sub-section (1)).

Woodlands.—It is to be noted that “woodlands” are included here but not in Sub-section (a), *supra*.

Open Spaces.—See Sub-section (a), note, *supra*.

Reasonable Access to Which, &c.—This is a question of fact on which it will probably be impossible to lay down any rules. The decision of the Commissioners is apparently subject to appeal (see Section 33, Sub-section (1), p. 26; Section 9, note, p. 107; and Sub-sections (c) and (d), *infra*), though on the question whether the “reasonable access,” when proved, is of public benefit their decision is expressly declared to be final (see the last paragraph of this sub-section).

- (c) On the site value of any land where it is shown to the Commissioners that the land is being kept free of buildings in pursuance of any definite scheme, whether framed before or after the passing of this Act, for the development of the area of which the lands forms part, and where, in the opinion of the Commissioners, it is reasonably necessary in the interests of

the public, or in view of the character of the surroundings or neighbourhood, that the land should be so kept free from buildings; or

Site Value.—See Section 26, Sub-section (4), and Section 16, Sub-sections (1) and (3), *supra*. Before it becomes necessary to consider whether this exemption applies the site value must be shown to exceed £50 an acre (Section 17, Sub-section (1)).

Definite Scheme.—It does not seem clear that the word “definite” adds anything to the meaning of “scheme,” or establishes any difference between the schemes contemplated here and those contemplated in Section 16, Sub-section (2) (b), where it is omitted.

Development means, by reference to Section 16, Sub-section (2), development by the erection of dwelling-houses or buildings, or the *bonâ fide* use of the land for the purposes of any business, trade, or industry other than agriculture.

In the Opinion of the Commissioners; their decision being expressly declared to be final (see (b), *supra*, (d), *infra*, and Section 33, Sub-section (1), p. 26, and Section 9, note, p. 107). All other decisions under the sub-section would appear to be subject to appeal.

This exemption is subject to the provision set out below that land so exempted shall not be built upon except by the consent of the Local Government Board.

- (d) On the site value of any land which is *bonâ fide* used for the purpose of games or other recreation where the Commissioners are satisfied that the land is so used under some agreement with the owner which, as originally made, could not be determined for a period of at least five years, or where, in the opinion of the

Commissioners, other circumstances render it probable that the land will continue to be so used.

Site Value.—See Section 25, Sub-section (4), and Section 16, Sub-sections (1) and (3). Before it becomes necessary to consider whether this exemption applies the site value must be shown to exceed £50 an acre (Section 17, Sub-section (1)).

Bonâ fide.—*Cf.* Section 9, pp. 106, 107, and Section 16, Sub-section (2), note.

The Commissioners are Satisfied.—Their decision is subject to appeal, though on the question of the probability that the land will continue to be so used, their decision is expressly declared to be final. Yet on the same point under Section 9 there is no such finality.

It is to be noted that the present exemption is not, like the exemption from increment value duty in Section 9, limited to land held by bodies corporate or unincorporate.

Where any land kept free from buildings in pursuance of any definite scheme has received the benefit of an exemption from undeveloped land duty by virtue of this section, that land shall not be built upon unless the Local Government Board give their consent, on being satisfied that it is desirable in the interests of the public that the restriction on building should be removed; and any such consent may be given subject to such conditions as to the mode in which the land is to be built upon as the Local Government Board think desirable under the circumstances.

Section 17, Sub-section (3) (c), *supra*.

Local Government Board.—For the position of the Board in relation to questions of building *cf.* the Housing, Town Planning, &c., Act, 1909 (9 Edw. VII. c. 44). Their decision in the present case would appear to be final.

The opinion of the Commissioners as to matters which are expressed to be matters for the opinion of the Commissioners under this sub-section shall be final and not subject to any appeal.

See Sub-sections (b), (c), and (d), *supra*; Section 33, Sub-section (1), p. 26; and Section 9, note, p. 107.

(4) Undeveloped land duty shall not be charged on the site value of any land not exceeding an acre in extent occupied together with a dwelling-house or on the site value of any land being gardens or pleasure grounds so occupied when the site value of the gardens and pleasure grounds together with the site value of the dwelling-house does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purpose of income tax under Schedule A. :

Provided that the exemption under this provision shall not apply so as to exempt more than five acres, and where the land, gardens, or pleasure grounds occupied together with a dwelling-house exceed five acres in extent, those five acres shall be exempted which are determined by the Commissioners to be most adapted for use as gardens

or pleasure grounds in connexion with the dwelling-house.

Where the dwelling-house, gardens, and pleasure grounds are valued for the purpose of income tax under Schedule A., together with other land, the total annual value shall be divided between the dwelling-house, gardens, and pleasure grounds and the other land in such manner as the Commissioners may determine.

Site Value.—See Section 25, Sub-section (4), and Section 16. Sub-sections (1) and (3), *supra*. Before it becomes necessary to consider whether these exemptions apply, the site value must be shown to exceed £50 an acre (Section 17. Sub-section (1)).

The exemptions in this section are:—

- (1) One acre of any land occupied together with any dwelling-house, whatever the use to which the land may be put, and whatever the value of the land and house. The land on which the dwelling-house stands is, of course, “developed,” and therefore not subject to duty (Section 16, Sub-section (2)); consequently it would seem that the acre may be calculated without including such land. But exactly how much land round a dwelling-house is “developed,” and thus exempt apart from the exemption granted by this sub-section is left as a doubtful question of fact (see Section 16, Sub-section (2)). In granting the exemption from increment value duty to land which is the site of a small dwelling-house (Section 8. Sub-section (1), p. 105), the site is for the purposes of that section declared to include any offices, courts, and yards, and gardens, not exceeding one acre in extent, occupied together with the dwelling-house, but no similar assistance is given in determining how much of the surrounding land a house may be considered to “develop,” and the present exemption suggests that the area cannot be nearly so extensive.

- (2) No duty is payable on not more than five acres of gardens or pleasure grounds occupied together with a dwelling-house, but only if the site value of the gardens and pleasure grounds, together with the site value of the land which is the site of the dwelling-house, does not exceed twenty times the annual value of the gardens, pleasure grounds, and dwelling-house as adopted for the purposes of Schedule A: the necessary apportionment being made if, for the purposes of Schedule A, the dwelling-house, gardens, and pleasure grounds are valued together with other land. If the land, gardens, or pleasure grounds (note, not "the land being gardens or pleasure grounds," as in the first paragraph) so occupied exceed five acres, the Commissioners are to choose (subject to appeal (Section 33. Sub-section (1))) for exemption the five acres most adapted for use as gardens or pleasure grounds in connection with the house.

There are points in this which raise doubts. It is not clear, for instance, whether, before beginning to calculate the five acres, it is permissible to exclude the acre exempted in Paragraph (1), *supra*; but it would seem that the two exemptions are not cumulative. Again, it is not clear whether if the inhabitants of two or more houses occupy the gardens or pleasure grounds, the five acres may be multiplied according to the number of houses, though it is not an unreasonable construction of the whole sub-section to say that each house is to enjoy five acres. (But the case of town squares, if not sufficiently provided for by this sub-section, may come under Sub-section (3) (c), and there may be few such squares large enough to raise the question at all.) Again, it is not clear why the exemption applying only to "land being gardens or pleasure grounds," the words "lands, gardens, or pleasure grounds" are used in the proviso.

Shall be Divided Between.—Cf. Section 8. Sub-section (3), p. 105.

Total Annual Value.—"Total" has not here any technical meaning, but is used as in Section 8. Sub-sections (2) and (3).

(5) Where agricultural land is at the time of the passing of this Act held under a tenancy originally created by a lease or agreement made or entered into before the thirtieth day of April, nineteen hundred and nine, undeveloped land duty shall not be charged on the site value of the land during the original term of that lease or agreement while the tenancy continues thereunder. Provided that where the landlord has power to determine the tenancy of the whole or any part of the land, the tenancy of the land or that part of the land shall not be deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power.

Agricultural Land.—See Section 41, p. 214; Section 17, Sub-section (2); and Section 7, note, p. 98.

At the Time of the Passing of this Act.—*I.e.* the 29th April, 1910.

Lease.—See Section 41, p. 208.

Site Value.—Section 25, Sub-section (4); Section 16, Sub-sections (1) and (3).

Before it becomes necessary to consider whether this exemption applies, the site value must be shown to exceed £50 an acre (Section 17, Sub-section (1)).

The Original Term.—*I.e., semble*, the term expressed in the lease, including any period for which it may be renewed (Section 41; Section 14, Sub-sections (2) and (3). note, p. 122).

For the other exemptions applicable to “agricultural land,” see Section 17, Sub-section (2), and Section 18.

18. Undeveloped land duty shall not be charged on the site value of any agricultural land, occupied and cultivated by the owner thereof, where the total value of that land, together with any other land belonging to the same owner, does not exceed five hundred pounds.

Exemption
of small
holdings
from
undeveloped
land duty.

For the purposes of this provision the expression "owner" includes a person who holds land under a lease which was originally granted for a term of fifty years or more.

Site Value.—See Section 25, Sub-section (4); Section 16. Sub-sections (1) and (3).

Before it is necessary to consider whether this exemption applies, the site value must be shown to exceed £50 an acre (Section 17, Sub-section (1)).

Agricultural Land.—See Section 41, p. 214, and Section 7, note. p. 98.

Occupied and Cultivated by the Owner.—Cf. Section 8, Sub-section (2), p. 103.

Total Value.—*I.e.* as ascertained under Section 25, Sub-section (3). The total value will be the total value as ascertained in the valuation in force for the time being. On periodical valuations under Section 28, it is true, only site value is to be shown, but the ascertainment of total value is a necessary step in the process of ascertaining site value (Section 25).

Together with any other Land seems to mean "together with the total value of any other land. &c."—*i.e.* none of the deductions referred to in Section 25, Sub-section (4), p. 44. are available to a person who claims this exemption.

The Expression "Owner" Includes.—Cf. Section 41 and the similar extension of the meaning of owner in Section 8. Sub-section (4).

All decisions under this section seem subject to appeal. See Section 33, Sub-section (1), and Section 9 note, p. 107.

Recovery of undeveloped land duty.

19. Undeveloped land duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January of the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable from the owner of the land for the time being as a debt due to His Majesty, and shall be borne by that owner notwithstanding any contract to the contrary.

If at any time undeveloped land duty is not assessed within the year for which it is charged, owing to there being no value either shown in the provisional valuation or finally settled on which the duty can be assessed, or for any other reason, the duty may be assessed at any time, and shall be payable at any time after the expiration of two months from the date of the assessment, so, however, that no such duty shall be assessed more than three years after the expiration of the year for which it is charged.

Shall be Assessed.—Subject to appeal (Section 33, Sub-section (1)).

Recoverable as a Debt Due to His Majesty.—Cf. Section 4 Sub-section (4), and Section 15, Sub-section (1).

The Owner of the Land for the time being.—See, for "owner," Section 41, p. 212. "For the time being" presumably refers to the time at which it becomes payable.

Notwithstanding any Contract to the Contrary.—Cf. Section 20. Sub-section (4), p. 164, where the words "whether made before or after the passing of this Act," are added, an addition which seems to suggest that in the present case contracts

made before the passing of the Act are not affected. The general intention, however, of the Act seems to be that the duty shall always rest upon the owner, and taken by themselves the words would cover contracts before or after the passing of the Act.

Provisional Valuation.—See Section 27, Sub-sections (1) and (6), p. 15, which provide for the assessment of duty on the basis of a provisional valuation when the final settlement is delayed, subject to further payment or return of duty if too little or too much is ultimately found to have been paid. The present section provides for the further possibility of there being not even a provisional valuation in existence at the time when the duty for the year ought to be paid, and, in particular, for the assessment of the duty chargeable for the year ending 31st March, 1910.

The Year for which it is Charged.—See Section 16, Sub-section (1). Presumably only an “owner” who was an “owner” at the time when the duty ought to have been paid is liable.

CHAPTER VI.

MINERAL RIGHTS DUTY AND GENERAL PROVISIONS AS TO MINERALS

(SECTIONS 20 TO 24).

SUMMARY OF THE SECTIONS.

1. *Mineral Rights Duty.*

MINERAL rights duty is a duty payable annually at the rate of one shilling in every pound of the rental value of all rights to work minerals and of all mineral way-leaves (Section 20, Sub-section (1)); certain substances being specifically exempted from the duty (Section 20, Sub-section (5)).

The rental value is, if the right to work the minerals is the subject of a mining lease, the amount of rent paid by the working lessee in the last working year (Section 20, Sub-section (2) (a)), and, where the minerals are worked by the proprietor, the amount which would have been received as rent by the proprietor in the last working year if the right to work them had been leased, rough general rules being prescribed for ascertaining this amount (Section 20, Sub-section (2) (b), and last paragraph of Section 24). In the case of way-leaves the rental value is the amount of rent paid by the working lessee in the last working year (Section 20, Sub-section (2) (c)).

Provision is made for a reduction in the rental value where the rent paid by the working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of any proprietor which would ordinarily have been borne by the lessee (Section 20, Sub-section (2), last paragraph).

The duty is payable at any time after 1st January in the year for which it is charged (Section 20, Sub-section (4)). It is charged for the financial year ending 31st March, 1910, and every subsequent financial year (Section 20, Sub-section (1)). It is recoverable from the proprietor where he is working the minerals, and, where they are leased, from the immediate lessor of the working lessee, and such immediate lessor may, of course, be the proprietor (Section 20, Sub-section (4)); and it is to be borne by the proprietor or immediate lessor, notwithstanding any contract to the contrary (Section 20, Sub-section (4)).

Provision is made by which it is intended that the immediate lessor who is a lessee may make a deduction from the rent he pays so that the proprietor and all lessors bear the burden of a duty corresponding to the rents they receive (Section 21, Sub-section (1)), and each of them obtains the benefit of expenditure by himself or his predecessors which would ordinarily have been borne by the respective lessees (Section 21, Sub-section (4)).

Proprietors and all persons receiving rent in respect of minerals and way-leaves are to furnish particulars to the Commissioners upon demand (Section 20, Sub-section (3)).

2. *General Provisions as to Minerals.*

With regard to minerals generally, the position is set out in detail in the notes to Section 22. It may be briefly summarised as follows:—

No reversion duty is charged on the determination of a mining lease (Section 22, Sub-section (1)).

For purposes of undeveloped land duty, the site value is never increased by the presence of minerals (Section 16, Sub-section (4)), though it is possible that it may be, in fact, diminished.

With regard to increment value duty, the position is more complicated. When valued, minerals are always to be treated as a separate parcel of land (Section 23, Sub-section (2)). They are valued not under Section 25 (Section 25, Sub-section (5)), but under Section 23, *i.e.* a “total value” is ascertained, which is the amount which the fee simple of the minerals might be expected to realise if sold in the open market by a willing seller in their then condition (Section 23, Sub-section (1)), and a “capital value” which is this “total value” after allowing a deduction for works or capital expenditure (if any) incurred *bonâ fide* by or on behalf of any person interested in the minerals for the purpose of bringing them into working (Section 23, Sub-section (1)). Throughout the Act, any reference to “site value” is a reference to this “capital value” where minerals are concerned (Section 23, Sub-section (4)).

If on 30th April, 1909, there were minerals in the land not either comprised in a mining lease or worked they are treated as having no value as minerals, unless the proprietor specifies their nature and gives his estimate of their value (Section 23, Sub-section (2)). Their "original" capital value will thus be either "nil" or, presumably, an amount based on such estimate. If they are subsequently sold increment value duty will be charged on the basis of the increment value, *i.e.* the excess of the capital value at the time of the sale over the original capital value, the provisions of Sections 1 and 2 being in full operation. The same thing will apply if they are property passing on the occasion of death (Section 1, Sub-section (b)), or property chargeable on periodical occasions (Section 1, Sub-section (c)); but presumably if the proprietor furnished no estimate the value on these occasions will continue to be "nil."

If they are subsequently worked by the proprietor, no increment value duty is chargeable by reason of their becoming worked, but Sections 20 and 21 come into operation and mineral rights duty is charged.

If they are subsequently leased under a mining lease, or an "occasion" arises while they are being worked, increment value duty is chargeable on the grant or transfer of any such lease or on such occasion, not as a lump sum but as

a duty chargeable annually (Section 22, Sub-section (1)). The increment value on which it is charged is in this case not a capital sum, but the sum by which the "rental value" in each year exceeds the annual equivalent of the original capital value, or of the capital value on the last preceding occasion on which increment value duty was collected otherwise than as an annual duty, if there was any such occasion, the annual equivalent being taken on the basis of twelve-and-a-half years' purchase (Section 22, Sub-section (3)). This duty is recoverable, like mineral rights duty, from the immediate lessor who has the right, as in the case of that duty, to make a deduction from his rent (Section 22, Sub-section (5), and Section 21, Sub-section (4)); a reduction is made in the rental value in so far as it represents a return for money expended in the past fifteen years in boring or otherwise proving the minerals (Section 22, Sub-section (4)); and the duty is not additional to mineral rights duty, but the proprietor or lessor is relieved from payment of mineral rights duty in any year up to the amount paid in respect of increment value duty in that year (Section 22, Sub-section (6)).

If, however, the minerals were comprised in a mining lease or being worked on 30th April, 1909, then, so long as they are so comprised or worked, and though for temporary periods

of not more than two years they may cease to be so comprised or worked, they are not to be valued at all (Section 23, Sub-section (3)), and no increment value duty is chargeable in respect of them (Section 22, Sub-section (2)). During this time they are, of course, subject to mineral rights duty.

Finally, if, having been comprised in a mining lease or worked on 30th April, 1909, they cease to be so comprised or worked, and the two years period expires without their being again leased or worked, they fall back again into the position of minerals which were never so comprised or worked, and become subject to increment value duty on future occasions; but as by Section 23, Sub-section (3), no "original capital value" has been ascertained, the capital value is to be specially ascertained at the date of their so ceasing (*i.e.* presumably at the end of the two years), and the value so ascertained is treated as the original capital value (Section 22, Sub-section (7)).

There is considerable doubt as to the effect of these sections upon the substances which are specifically excepted from mineral rights duty (Section 20, Sub-section (5); Section 22, Sub-section (8)).

Proprietor, rent, mining lease, working lessee, working year, and mineral way-leaves, are specially defined for the purposes of these sections (Section 24).

Mineral Rights Duty and Provisions as to Minerals.

Mineral
rights duty.

20. (1) There shall be charged, levied, and paid for the financial year ending the thirty-first day of March, nineteen hundred and ten, and every subsequent financial year on the rental value of all rights to work minerals and of all mineral wayleaves, a duty (in this Act referred to as a mineral rights duty) at the rate in each case of one shilling for every twenty shillings of that rental value.

The references to minerals in sections of the Act other than Sections 20 to 24 are as follows:—By Section 25, Sub-section (5), p. 49, the provisions of that section by which gross value, full site value, total value, and site value are ascertained, are not applicable for the purpose of the valuation of minerals; such valuation is provided for independently, under Section 23. By Section 16, Sub-section (4), p. 139, for the purpose of undeveloped land duty undeveloped land does not include the minerals.

For the Financial Year ending, &c.—Like the undeveloped land duty, this duty is to be deemed in effect to have come into operation as from the date of the Budget statement in 1909 (*cf.* Section 16, Sub-section (1)), and it will, therefore, be payable for the year ending 31st March, 1910, as soon as the necessary assessment has been made (Section 20, Sub-section (4)).

It is charged on the proprietor or immediate lessor (see Section 20, Sub-section (4)), with power to a lessor who is himself a lessee to make corresponding deductions from his rent (see Section 21).

Rental Value.—See Sub-section (2), *infra*.

Minerals.—There is no definition of minerals in the Act, and the term must, therefore, be construed with the assistance of the cases on, *e.g.*, The Railways Clauses Act, 1845, and The Waterworks Clauses Act, 1847 (*cf.* Browne and Allen, *The Law of Compensation*, 2nd ed., p. 328; Cripps, *Law of Compensation*, 5th ed., p. 126), subject to the consideration that the present Act imposes taxes,

and will, therefore, be construed in favour of the subject. By Sub-section (5), *infra*, certain substances are specified in respect of which mineral rights duty is not to be charged.

Mineral Way-leaves.—As defined in Section 24, p. 183. “any way-leave, air-leave, water-leave, or right to use a shaft granted to or enjoyed by a working lessee (as defined in the same section). whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connection with the working of the minerals.” And a “working lessee” is defined as meaning “as respects the right to work minerals, the lessee who is actually working the minerals, or would have the right actually to work the minerals if the minerals were worked, and as respects mineral way-leaves, the lessee who is in actual enjoyment of the way-leave.” There is some doubt as to the joint effect of these definitions, but it seems fairly clear that the only way-leaves included are those granted to a lessee who is working the minerals, or would have the right to work them. “His mine” and “in connection with the working of the minerals,” in the definition of way-leave, exclude a person who has no mine and is not actually working the minerals, and the words “working lessee” refer to the first part of the definition of “working lessee,” the second part being applicable to Section 20, Sub-section (2) (c).

(2) The rental value shall be taken to be—

- (a) Where the right to work the minerals is the subject of a mining lease, the amount of rent paid by the working lessee in the last working year in respect of that right: and

Mining Lease.—See the definition in Section 24, p. 182. It includes an agreement for a mining lease or any tenancy or licence; and “lessor” and “lessee,” in addition to the meanings given to them by Section 41, include also a “licensor” and a “licensee.”

Rent.—As defined in Section 24 and Section 41 (which incorporates the definition in The Conveyancing Act, 1881) rent includes

yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise; the additions made to the meaning of the word for the purposes of duties in respect of minerals being "any fine, premium, or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift," and "where any rent is paid or rendered otherwise than in money or money's worth, the amount of the rent shall be taken to be such sum as the Commissioners consider to be the value thereof."

Working Lessee.—As defined in Section 24 (first part of the definition), p. 183.

Working Year.—As defined in Section 24. It is the year ending the 30th day of September (or other day approved by the Commissioners) completed immediately before the 1st day of January in any financial year for which the duty is charged. For instance, in the case of the duty chargeable for the financial year ending 31st March, 1910, the duty is payable at any time after the 1st January, 1910 (though in this case delayed by the delay in the passing of the Act), and it will be charged on the amount of rent paid by the working lessee in the year ending on 30th September, 1909.

The "amount of rent" is subject to the deduction in the proviso to this sub-section, *infra*.

All decisions of the Commissioners are apparently subject to appeal (Section 33. Sub-section (1), p. 26, and Section 9, note, p. 107).

- (b) Where minerals are being worked by the proprietor thereof, the amount which is determined by the Commissioners to be the sum which would have been received as rent by the proprietor in the last working year if the right to work the minerals had been leased to a working lessee for a term and at a rent and on conditions customary in the district, and the minerals had been worked to the

same extent and in the same manner as they have been worked by the proprietor in that year:

Provided that the Commissioners shall cause a copy of their valuation of such rent to be served on the proprietor; and

The Proprietor means "the person for the time being entitled in possession to the minerals or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which Section 65 of The Conveyancing and Law of Property Act, 1881, applies" (Section 24).

The section of The Conveyancing Act, 1881, is that giving power to enlarge a term into a fee simple "where a residue unexpired of not less than two hundred years of a term which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable."

For the purposes of the present Act, therefore, a proprietor appears to include a lessee under a lease of the length and nature so described, notwithstanding that the residue unexpired is less than two hundred years.

Are being Worked.—By Section 24. "minerals which are being won for the purpose of being immediately worked shall be deemed to be minerals which are being worked."

The Amount which is Determined by the Commissioners.—Subject to appeal (Section 33, Sub-section (1)).

Rent, Last Working Year, Working Lessee.—See Sub-section (a), notes, *supra*.

The amount is to be fixed subject to the provision in Section 24: "Where the circumstances of a district are such that in the opinion of the Commissioners it is impracticable to fix any sum which satisfactorily represents a rent customary in the district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere than in the district shall be substituted for the rent customary in the district."

- (c) In the case of a mineral wayleave, the amount of rent paid by the working lessee in the last working year in respect of the wayleave:

Mineral Way-leave, Rent, Working Lessee, Last Working Year.—See Section 20, Sub-sections (1) and (2) (a), notes, *supra*.

Provided that if in any special case it is shown to the Commissioners that the rent paid by a working lessee exceeds the rent customary in the district, and partly represents a return for expenditure on the part of any proprietor of the minerals which would ordinarily have been borne by the lessee, the Commissioners shall substitute as the rental value of the right to work the minerals or the mineral wayleaves, as the case may be, such rent as the Commissioners determine would have been the rent customary in the district if the expenditure had been borne by the lessee.

Rent, Working Lessee.—See Section 20, Sub-sections (1) and (2) (a), notes, *supra*.

Customary in the District.—Section 20, Sub-section (2) (b), note.

Any Proprietor.—Section 20, Sub-section (2) (b), note, *supra*. A predecessor in title of the present proprietor is included.

Such Rent as the Commissioners Determine.—Subject to appeal (Section 33, Sub-section (1)).

For the effect of this substitution when a lessor, who is himself a lessee, claims to make a deduction from his rent see Section 21, Sub-section (4).

(3) Every proprietor of any minerals and every person to whom any rent is paid in respect of any right to work minerals or of any mineral wayleave shall, upon notice being given to him by the Commissioners requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the minerals, particulars as to the minerals worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

Proprietor.—See Section 20, Sub-sections (2) (b), note; and see the similar provisions applicable generally to all land, including minerals (Section 26, Sub-section (2), and Section 31).

The penalty for knowingly making any false statement or false representation is imprisonment on summary conviction for a term not exceeding six months with hard labour (Section 94, p. 221).

(4) Mineral rights duty shall be assessed by the Commissioners and shall be payable at any time after the first day of January in the year for which the duty is charged, and any such duty for the time being unpaid shall be recoverable as a debt due to His Majesty from the proprietor of the minerals, where the proprietor is working the minerals, and in any other case from the immediate lessor of the working lessee. As between the immediate lessor and the working lessee, the duty shall be borne by the immediate lessor, notwithstanding any contract to the contrary, whether made before or after the passing of this Act.

Shall be Assessed.—Subject to appeal (Section 33, Sub-section (1)).

Recoverable as a Debt due to His Majesty.—*Cf.* Section 4, Sub-section (4); Section 6, Sub-section (3); Section 15, Sub-section (1); and Section 19.

Proprietor.—As defined in Section 24. See Sub-section (2) (b), *supra*.

Immediate Lessor of the Working Lessee.—For definition of “working lessee” see Section 24 and Section 20, Sub-section (1), note, “Mineral way-leaves.” For a similar provision against “contracting out” in the case of undeveloped land duty see Section 19. For the case where the immediate lessor is himself a lessee see Section 21. The “immediate lessor” may, of course, be the proprietor.

(5) Mineral rights duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel.

See Section 20, Sub-section (1), note. The exemption here granted suggests that the above substances are to be included in the term minerals, and this may have an important bearing on cases where other similar substances are concerned.

The exemption is from "mineral rights duty," which in Section 20, Sub-section (1), includes the duty on the rental value of way-leaves.

As to the position, generally, of the substances here excepted see Section 22, Sub-section (8), note, p. 177.

21. (1) Any immediate lessor who under this Act pays any mineral rights duty, and is himself a lessee of the right to work the minerals or of the wayleave in respect of which the duty is paid, shall be entitled to deduct from the rent paid by him in respect of the right to work the minerals or the wayleave, as the case may be, to his lessor a sum equal to the mineral rights duty on a rental value of the same amount as the rent payable; and any person from whose rent any such deduction is made may make a similar deduction from any rent paid by him in respect of the right to work the minerals or in respect of the wayleave, as the case may be.

Deduction
of duty in
case of
intermediate
leases of
minerals.

Immediate Lessor.—See Section 20, Sub-section (4).

A lessee under a long lease within the meaning of Section 65 of The Conveyancing Act, 1881, is a proprietor (see Section 24 and Section 20, Sub-section (2) (b), note, *supra*), and is not "himself a lessee" within the meaning of the present section.

The intention of this section is to enable the immediate lessor to throw back upon his superior lessor, and so on till the proprietor is reached, a part of the duty which he himself has paid. But the process is somewhat obscurely described. If A, the immediate lessor, pays any duty (and, *semble*, only if and after he has paid it, unless the words "any immediate lessor who pays" are to

be read as meaning "who will be under a liability to pay," a construction which does not seem possible), and is himself a lessee to B, then apparently on his next payment of rent to B (rent, including royalties, &c., see Section 20, Sub-section (2), note) he may deduct "a sum equal to the mineral rights duty on a rental value of the same amount as the rent payable." Now A pays his duty, say, on 3rd January, on a rental value which is the amount he received from the working lessee in the year ending the previous 30th September (Section 20, Sub-section (2) (a)); but he is not, apparently, to calculate his deduction on the basis of the amount he paid to B in the same period, but on a "rental value" which is of the same amount as the rent payable. But it is not easy to see what the words "the rent payable" refer to. Probably they mean the particular amount of the next instalment of rent which falls due, and presumably of each further instalment during the succeeding year, in which case the section simply means that after paying his own duty, A (and every other lessor who is not the proprietor) may deduct one shilling in the pound from the rent he has to pay to his own lessor.

If A's lease from B includes other land than that which is being worked for minerals, there will have, of course, to be an apportionment of the rent.

(2) Any person in receipt of rent from which a deduction may be made under this section shall allow the deduction, and the person making the deduction shall be discharged from the payment of an amount of rent equal to the amount deducted, and any contract for the payment of rent without allowing such a deduction shall be void.

Shall be Discharged.—I.e. it is defence to a claim for so much of the rent; not matter for counterclaim.

Any Contract, &c.—Note that here, as in Section 19, p. 150, there are not the words "whether made before or after the passing of this Act," which are found in Section 20, Sub-section (4).

(3) If any person refuses to allow a deduction which he is required to allow under this section, he shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Where in any special case mineral rights duty has been charged on a rental value based on a rent which has been substituted under the provisions of this Act for the rent actually payable by the working lessee, or where in any special case the rental value with reference to which increment value duty is charged has been reduced under the provisions of this Act for the purposes of the collection of that duty, the Commissioners shall, on the application of any lessor from whose rent a deduction may be made in respect of mineral rights duty or increment value duty, as the case may be, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

The first "special" case referred to is that contained in the proviso to Section 20, by which, if the rent is shown to exceed the rent customary in the district, and partly to represent a return for expenditure on the part of any proprietor which would ordinarily have been borne by the lessee, there is substituted what would have been the rent customary in the district if the expenditure had been borne by the lessee.

The operation of the section in this case would seem to be as follows:—A, a working lessee, pays to B his immediate lessor a rent of £1000; B pays to C, his lessor, a rent of £800, and C

pays to the proprietor a rent of £600. B succeeds in showing that of the £1000 he receives £100 is merely return for expenditure on the part of the proprietor or a predecessor in title of the proprietor. This he can only prove by showing that he himself pays to C £100 more than he would pay but for such expenditure. and that C in like manner pays a similar £100 to the proprietor. If, therefore, £900 is substituted for £1000 as the rental value on which B pays duty, C is entitled, when B deducts 1s. in the £ from his rent under Section 21, Sub-section (1), to have 700 instead of 800 shillings deducted, and similarly the proprietor is entitled to have 500 shillings and not 600 shillings deducted.

With reference to the last words of this sub-section, it is not easy to see in what case the grounds for the substitution of the lower rent would not be applicable, as a return for expenditure on the part of any proprietor can only be made by the working lessee, where there are intermediate lessors, if the proprietor charged a higher rent to the first of such intermediate lessors, and he, in turn, transmitted the increase. It seems, indeed, as if the word "proprietor" in the proviso to Section 20 were really intended to be "proprietor or lessor"; and if the expenditure were by an intermediate lessor, then his lessor would clearly fail to establish any claim to the benefit of the reduction.

For the other special case referred to see Section 22. Sub-section (4), p. 174.

Special provisions as to increment value duty and reversion duty in the case of minerals worked or leased.

22. (1) No reversion duty shall be charged on the determination of a mining lease, and no increment value duty shall be charged on the occasion of the grant of a mining lease or in respect of minerals which are comprised in a mining lease, or are being worked, except as a duty payable annually in manner provided by this Act.

Reversion Duty.—See Section 13, p. 115.

Mining Lease.—See Section 24. p. 182.

Increment Value Duty, Occasion of the Grant.—See Section 1. p. 56.

Appeals.—See Section 33, Sub-section (1), p. 26, and Section 9, note, p. 107.

The general effect of this sub-section is to exclude any liability to reversion duty when the minerals are the subject of a mining lease (but apparently it remains chargeable in the case of the substances referred to in Section 20, Sub-section (5) (Section 22, Sub-section (8), p. 177, *infra*)); and on the "occasion" of the grant of a mining lease comprising them, or on any "occasion" while they are comprised in a mining lease or being worked, to substitute for the ordinary increment value duty an increment value duty calculated and payable in accordance with the special provisions contained in this section.

(2) Increment value duty shall not be charged in the case of any minerals which were, on the thirtieth day of April, nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as the minerals are for the time being either comprised in a mining lease, or being worked by the proprietor:

Provided that the exemption under this section shall continue to apply in the case of any minerals, although they cease for a temporary period to be comprised in a mining lease or to be worked, so long as the period does not exceed two years.

By Section 24, minerals are deemed to be comprised in a mining lease (as defined in that section) if the right to work them is the subject of a mining lease, or if they are being worked under the terms of such a lease, although the lease has expired; and minerals which are being won for the purpose of being immediately worked are deemed to be "minerals which are being worked"; and, further, "where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor (as defined in that section), if the minerals are being worked by the proprietor, or which the lessee has power

to work if the minerals are being worked by a lessee, and which would in the ordinary course of events be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date."

The effect of the present sub-section is that if minerals were, on 30th April, 1909, comprised in a mining lease or being worked within the meaning of the above provisions, then till they cease to be so comprised or worked, whatever occasion may arise under Section 1, no increment value duty is payable, and by Section 23, Sub-section (3), there is to be no valuation of the minerals during the same period.

As to the position of the minerals excepted from mineral rights duty by Section 20, Sub-section (5), see Section 22, Sub-section (8).

It will be convenient at this point to state generally what the position with regard to minerals appears to be, so far as increment value duty is concerned. On the original valuation of a piece of land under Sections 25, 26, and 27, suppose that it is known that under that land there are or may be minerals which increase its value. Apart from the various special provisions which are now to be dealt with, the site value would be assessed as including the value given to the land by the presence of the minerals; and on subsequent "occasions" the presence of the minerals would be taken into account in the valuations to be made under Section 2. But while minerals are not comprised in a mining lease or being worked they are to be treated as having no value as minerals unless the proprietor, when furnishing his original return to the Commissioners under Section 26, Sub-section (2), specifies their nature and his estimate of their capital value (as defined in Section 23, Sub-section (1)); and, in ascertaining the value of the minerals under this estimate, the Commissioners will treat the minerals as a separate parcel of land (Section 23, Sub-section (2)). This "capital value" of the minerals will not in any way affect the "site value" of the land, and it is only on the site value of the land apart from the minerals that undeveloped land duty is charged (Section 16, Sub-section (4)). There will not, it is to be noted, be a "site value" of minerals estimated according to the provisions of Section 25 (see Section 25, Sub-section (5)), but a "capital value" estimated in accordance with Section 23, Sub-section (1); and so long as the minerals

remain unworked, or not comprised in a mining lease. the increment will be calculated in the ordinary way under Section 2, on the basis of that "capital value" (Section 23, Sub-section (4)), or they will be treated as having no value.

So far we have been dealing with minerals which were not, when the original valuation was made (*i.e.* as on the 30th April, 1909 (Section 26, Sub-section (1)), either comprised in a mining lease or being worked. If they were then so comprised or worked, then the provisions of Section 22, Sub-section (2), and Section 23, Sub-section (3), come into operation. Mineral rights duty is payable under Section 20, but there is to be no valuation of such minerals so long as they are comprised in a mining lease or worked, though they may cease for a temporary period of not more than two years, to be so comprised or worked (Section 23, Sub-section (3)), and during and for a like period no increment value duty is to be charged in respect of the minerals on any occasion such as death, transfer of lease, grant of new lease, or any periodical occasion in the case of a company (Section 22, Sub-section (2)).

If, however, the minerals were not so comprised or worked on 30th April, 1909, but subsequently become so comprised or worked, then increment value duty is payable both on the grant of the lease or on any other occasion, not in a lump sum as is usually the case with ordinary increment value duty, but as an annual charge under Section 22, Sub-section (3). But payment of this duty operates, *pro tanto*, as a relief from payment of mineral rights duty (Section 22, Sub-section (6)).

Further, when minerals cease to be comprised in a mining lease or to be worked, then they, as it were, fall into line with the rest of the land, though still treated as a separate parcel of land; but no "original capital value" (the equivalent of "original site value") having been ascertained, if they were comprised in a mining lease or being worked on 30th April, 1909, it is, to meet this case, provided that their "original capital value," for the purposes of calculation of increment value on future occasions, shall be a "capital value" ascertained under Section 23, Sub-section (1), at the time when they cease to be so comprised or worked (Section 22, Sub-section (7)). Apparently if they were in April, 1909, not comprised in a lease or worked, and the owner did not furnish any estimate under Section 23, Sub-section (2), their "original capital value" is taken as nil. But see Section 22. Sub-section (7), note.

Provided that the Exemption, &c.—I.e. apparently, if another lease is granted, or the minerals commence again to be worked, within two years, the exemption continues regardless of the temporary interruption.

For the position of the minerals exempted from mineral rights duty under Section 20, Sub-section (5), see Section 22. Sub-section (8). note.

(3) Increment value duty in respect of the increment value of minerals which are comprised in a mining lease or are being worked shall, where that duty is chargeable, be charged annually; and the increment value shall, instead of being estimated as a capital sum, be taken to be the sum (if any) by which, in each year during which the lease continues or the minerals are being worked, as the case may be, the rental value on which mineral rights duty is charged in respect of the right to work the minerals exceeds the annual equivalent of the original capital value of the minerals, or the capital value of the minerals on the last preceding occasion on which increment value duty has been collected otherwise than as an annual duty, if increment value duty has been so collected before the minerals have become comprised in a mining lease or have commenced to be worked; and the annual equivalent of any such capital value of the minerals shall be taken to be two twenty-fifth parts of that capital value.

See note to last sub-section.

The present sub-section deals with the case where minerals were not comprised in a mining lease or worked by the proprietor on 30th April, 1909, but became subsequently so comprised or

worked; or which, having been on 30th April, 1909, so comprised or worked, ceased for two years or more to be so comprised or worked, and thereafter were again so comprised or worked. As has been seen, increment value duty is then payable both on the grant of the lease and on any other occasion. It is necessary, therefore, to apply the general provisions as to increment value duty so far as they are applicable, with this difference—that while the lease continues or the minerals are being worked, instead of taking the capital value of the minerals as a separate parcel of land (Section 23, Sub-section (2)), and deducting therefrom the “original capital value,” and charging the duty as a lump sum on the difference (*cf.* Section 2), it will be necessary to work out the following calculation:—Find the “original capital value” of the minerals, which will be the sum ascertained (see Section 23, Sub-section (1)) on the estimate (if any) furnished by the proprietor under Section 23, Sub-section (2) (if the proprietor furnished no estimate it will be “nil”), or the capital value on the last preceding occasion on which increment value duty was collected otherwise than as an annual duty under this section (*i.e.* before the mining lease was granted or the minerals commenced to be worked. There may have been, for instance, a sale of the land, including the minerals, or of the minerals alone, the consideration for which showed a capital value attributable to the minerals as a separate parcel of land which was higher than their “original capital value,” as a result of which sale increment value duty was paid on the minerals taken separately in accordance with the provisions of Section 2.) Having found this original capital value, or the capital value on such last preceding occasion, find what was the annual equivalent of that capital value. For this purpose such value is to be taken in all cases on the basis of twelve and a half years’ purchase, the annual equivalent being two twenty-fifth parts of the capital value. Next subtract this “annual equivalent” so found from the “rental value” on which mineral rights duty is charged under Section 20, Sub-sections (1) and (2), during each year during which the lease continues or the minerals are worked, and the difference is the “increment value,” on which the increment value duty is one pound in every complete five.

As to collection see Sub-section (5), *infra*.

As to corresponding relief from mineral rights duty see Sub-section (6), *infra*.

Possibly the ten per cent. deductions provided for in Section 3, Sub-section (5), p. 78, are to be allowed, but it is not easy to see how they are to be calculated, though it may be possible to do it by ascertaining what the deductions would be if both the amounts were capital amounts, and then making a proportionate deduction from the annual duty.

(4) If in any case it is shown to the Commissioners that the rental value on which mineral rights duty is charged represents in part a return for money expended within fifteen years by a lessor in boring or otherwise proving the minerals, the rental value shall be reduced for the purposes of the collection of increment value duty by the amount which represents that return.

Cf. Section 20, Sub-section (2), proviso; Section 21, Sub-section (4); and see note to Sub-section (3), *supra*.

By the proviso to Section 20, the rental value on which the mineral rights duty is charged is reduced in so far as it represents a return for expenditure on the part of any proprietor which would ordinarily have been borne by the lessee. The present sub-section provides an additional deduction for the purposes of increment value duty only, and the expenditure in respect of which the deduction is allowed is limited to "boring or otherwise proving" within the last fifteen years, and expenditure by any lessor is included. Only the lessor who, or whose predecessor in title, incurred the expenditure can claim the benefit of the reduction. In the case of any lessor superior to him the grounds for the reduction (see Section 21, Sub-section (4)), are not applicable.

(5) Increment value duty payable annually under this section shall, instead of being collected as provided by this Act in other cases, be recoverable in the same manner as mineral rights duty, with the same right of deduction.

See Section 22, Sub-section (3).

Recoverable in the same manner as Mineral Rights Duty.—See Section 20, Sub-section (4), and for the right of deduction see Section 21. That section is presumably to be applied by analogy, and a lessor who is himself a lessee and pays increment value duty on the difference between the “annual equivalent” (Section 22, Sub-section (3)) and the “rental value” on which he pays mineral rights duty, may, it would seem, deduct from the rent he pays to his lessor a sum equal to the increment value duty on the amount (if any) by which a rental value of the same amount as the rent he has to pay exceeds that annual equivalent. If, for instance, the “annual equivalent” is £500, and the immediate lessor pays mineral rights duty on a rental value of £1000, he is liable to increment value duty on an increment of £500; but his superior lessor may only receive from him a rent of £600, and therefore he can only deduct increment value duty from the rent payable on the basis of an increment of £100.

(6) Any proprietor or lessor of any minerals who pays increment value duty in pursuance of this provision shall be entitled to be relieved in any year from the payment of mineral rights duty, as such proprietor or lessor, up to the amount paid by him in that year in respect of increment value duty.

For the purposes of this provision, a deduction of any amount from the rent payable to a lessor on account of mineral rights duty shall be deemed to be a payment of that duty, and the relief may be given either by allowance or repayment or both of those means, as the occasion may require.

Proprietor, Lessor, Rent.—See Section 20, notes.

Relieved from the Payment, &c., and also (by the effect of the second paragraph) from any deduction under Section 21 on account of mineral rights duty. In effect, only that duty which is the higher in amount is to be paid; if the increment value duty in the course of the year is £100 and the

mineral rights duty is £120, then, having paid £100 in respect of the former, he need only pay £20 in respect of the latter. The last words of the sub-section seem to contemplate a settlement of accounts each year; but it must be remembered that the Commissioners will only deal with the immediate lessor, or a proprietor who is actually working the minerals, though by Section 21, Sub-section (4), they have a jurisdiction to decide, in effect, what the amount of the deduction is to be. Apart from this, the deductions must be settled by the various lessors and lessees between themselves. Presumably each lessor who is lessee, on paying his own rent, must calculate how much he would be entitled to deduct for increment value duty and how much for mineral rights duty, and deduct the larger sum; but the circumstances may present an infinite variety of complications.

(7) Where minerals cease to be comprised in a mining lease or to be worked within the meaning of this section, the capital value of the minerals at the time shall be specially ascertained in accordance with the provisions of this Act, and the capital value as so ascertained shall be treated as the original capital value of the minerals.

See Section 22, Sub-section (2), note.

This section provides for the case of minerals which, having been comprised in a mining lease or worked on 30th April, 1909, have, therefore (under Section 23, Sub-section (3)), never had their "original capital value" ascertained or been subject to any valuation at all. It would appear that they do not cease to be so comprised or worked until the expiration of the two years after the actual cesser provided for in Section 22, Sub-section (2), and Section 23, Sub-section (3), for the valuation provided for in the present sub-section is only intended to meet the case of increment value duty being chargeable on further occasions after they have so ceased, and till the two years have elapsed it will not be possible to say that the interruption was not temporary and that the exemption from all increment value duty does not continue.

But the provisions of the present section do not appear to be confined to the above case, but to extend to all cases where minerals cease to be so comprised or worked, whether they were so comprised or worked on 30th April, 1909, or not. If at that date they were not so comprised, then, as has been seen, they have already had a capital value ascertained as either "nil," or an amount based on the estimate furnished by the proprietor under Section 23, Sub-section (2). The present sub-section, therefore, appears to substitute for this a new "original capital value" ascertained at the time of the cesser of the lease or of the working.

Capital Value.—See Section 23, Sub-section (1), and Section 22, Sub-sections (2) and (3), notes.

(8) Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act.

Cf. Section 20, Sub-section (5), and Section 22, Sub-section (1), note.

The position of the excepted minerals is not clear. No mineral rights duty is charged in respect of them (Section 20, Sub-section (5)), but as minerals they will be treated as a separate parcel of land, and if not leased or worked, as having no value, unless the proprietor furnishes an estimate (Section 23, Sub-section (2)). If comprised in a mining lease or worked on April 30, 1909, they will not be valued (Section 23, Sub-section (3)), and if they are not valued there can be no increment value duty upon them, a result which is in direct contradiction to the meaning of the present sub-section, which prevents the application to them of Section 22, Sub-section (2). Further, as Section 22, Sub-section (7), does not apply to them, there is no provision by which their "original capital value" can ever be ascertained if on 30th April, 1909, they were comprised in a mining lease or being worked, for apart from Section 22, Sub-section (7), there is in the Act no provision for ascertaining "original capital value" except on the original valuation. It would seem, therefore, that such minerals, if leased or worked on 30th April, 1909, can never become liable to increment value duty. But as Section 22, Sub-section (1), does not apply to them, reversion duty is chargeable on

the determination of a lease which comprises them (see Section 13, Sub-sections (1) and (2)), and their total value for this purpose will be ascertained under Section 23, Sub-section (1). If not leased or worked on 30th April, 1909, they will be valued (if the proprietor furnishes an estimate under Section 23, Sub-section (2)), in accordance with the provisions of Section 23, Sub-section (1), or (under Section 23, Sub-section (2)) their original total value will be "nil"; and on all subsequent occasions they will be subject to increment value duty under Sections 1 and 2 like other land, with the substitution only of their "capital value" for "site value" (Section 23, Sub-section (4)).

Application
of provisions
as to total
and site
value to
minerals.

23. (1) For the purposes of this Part of this Act, the total value of minerals means the amount which the fee simple of the minerals, if sold in the open market by a willing seller in their then condition, might be expected to realise, and the capital value of minerals means the total value, after allowing such deduction (if any) as the Commissioners may allow for any works executed or expenditure of a capital nature incurred *bonâ fide* by or on behalf of any person interested in the minerals for the purpose of bringing the minerals into working, or where the minerals have been partly worked, such deduction as is, in the opinion of the Commissioners, proportionate to the amount of minerals which have not been worked.

Minerals.—There is no reason to suppose that the minerals referred to in Section 20, Sub-section (5), are not included. See Section 22, Sub-section (8), note.

Total Value.—*Cf.* gross value and total value as defined in Section 25, Sub-sections (1) and (3), p. 37.

Fee Simple.—See the definition in Section 41, p. 212.

Capital Value.—This, wherever minerals are concerned, is to be substituted for site value (see Section 23, Sub-section (4)).

As the Commissioners may allow.—Subject to appeal (Section 33, Sub-section (1), p. 26); and all decisions under this section seem subject to appeal (*cf.* Section 9, note, p. 107).

Works Executed or Expenditure of a Capital Nature.—(*Cf.* Section 25, Sub-section (4) (b), p. 44). It is to be noted that there is here no limitation like that contained in the words “directly attributable to” in that section. In the present case, of course, as the expenditure is to be “for the purpose of bringing the minerals into working,” there will be less room for doubt. There is no limitation to “works and expenditure” on the land under which the minerals lie, but it appears (though not with any certainty) that the expenses of forming a company for the purpose would not be allowed. A deduction “allowed for works” seems to have the same meaning as a deduction of value proved to be attributable to works.

(2) For the purposes of valuation under this Part of this Act, all minerals shall be treated as a separate parcel of land; but, where the minerals are not comprised in a mining lease or being worked, they shall be treated as having no value as minerals, unless the proprietor of the minerals, in his return furnished to the Commissioners, specifies the nature of the minerals and his estimate of their capital value.

Minerals which are comprised in a mining lease or are being worked shall be treated as a separate parcel of land, not only for the purposes of valuation, but also for the purpose of the assessment of duty under this Part of this Act.

See Section 22, notes.

For the Purposes of Valuation.—*I.e.* under Sections 25 and 26, as modified for the purposes of minerals in Section 23. Sub-section (1), *supra*.

As a Separate Parcel of Land.—It is important that the capital value of minerals should be kept separate from the site value of the land in which they lie; for though the two values may be added for the purposes of ascertaining increment value duty on the whole land, the mineral capital value is not to be added to the site value for the purposes of undeveloped land duty (Section 16, Sub-section (4), p. 139). The differential treatment of minerals in respect of increment value duty also makes such separation, both for valuation and assessment, necessary (see Section 22, notes, *supra*).

Comprised in a Mining Lease.—See Section 24, p. 185. Minerals are deemed to be so comprised if they are worked under the terms of a lease which has expired. See, generally, the notes to Section 22, *supra*.

Proprietor.—As defined in Section 24, *infra*.

Return Furnished.—*I.e.* under Section 26. Sub-section (2), the proprietor being presumably the “owner” for that purpose.

(3) The provisions of this Part of this Act with respect to valuation shall not apply to minerals which were, on the thirtieth day of April, nineteen hundred and nine, either comprised in a mining lease or being worked by the proprietor, so long as they are for the time being either comprised in a mining lease or being worked by the proprietor, nor shall such provisions apply to any minerals which cease for a temporary period to be comprised in a mining lease or to be worked so long as the period does not exceed two years.

See Section 22. Sub-section (2). note; and for the case of minerals excepted from mineral rights duty see Section 22. Sub-section (8).

(4) Except where the context otherwise requires, any references in this Part of this Act to the site value of land shall, in cases where the land consists solely of minerals, or comprises minerals, be construed, so far as respects the minerals, as a reference to the capital value of the minerals.

See, generally, Section 22, notes, *supra*.

24. For the purpose of the provisions of this Act as to minerals—

Definitions
for purpose
of mineral
provisions.

The expression “proprietor” means the person for the time being entitled in possession to the minerals, or to the rents and profits thereof, or any part of those rents and profits, but does not include a person entitled as lessee other than a person entitled to the possession of land comprised in a lease for any long term of years to which section sixty-five of The Conveyancing and Law of Property Act, 1881, applies;

44 & 45 Vict.
c. 41.

See Section 20, Sub-section (2) (b), note, and Section 20, Sub-section (3).

This definition appears to take the place of the definition of owner in Section 41; and “proprietor” must, when minerals are concerned, be substituted for “owner” in Sections 26, 27, and 31.

Section 65 of The Conveyancing Act, 1881, is set out in the note to Section 20, Sub-section (2) (b), p. 161.

The expression “rent” includes yearly or other rent, and shall, in addition to the meaning

assigned to it for the general purposes of this Part of this Act, be construed as including any fine, premium, or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;

Where any rent is paid or rendered otherwise than in money or money's worth, the amount of the rent shall be taken to be such sum as the Commissioners consider to be the value thereof;

See Section 41, p. 208, and Section 20, Sub-section (2) (b), notes.

As the Commissioners Consider.—Subject, apparently, to appeal.
See Section 33, Sub-section (1), p. 26, and Section 9, note, p. 107.

The expression “mining lease” means a lease for mining purposes, that is, for searching for, winning, working, getting, making merchantable, carrying away, or disposing of, mines and minerals, or purposes connected therewith, and includes an agreement for such lease, or any tenancy or licence, whether by deed, parol, or otherwise for mining purposes, and the expressions “lessor” and “lessee” shall in addition to the meaning assigned to them for the general purposes of this Part of this Act be construed so as to include respectively a licensor and a licensee:

See Section 20, Sub-section (2) (a), note.

Cf. Conveyancing and Law of Property Act, 1881. Section 2, Sub-section (xi).

Lessor, Lessee.—See Section 41, p. 213.

The expression “working lessee” means as respects the right to work minerals the lessee who is actually working the minerals. or who would have the right actually to work the minerals if the minerals were worked, and as respects mineral way-leaves the lessee who is in actual enjoyment of the way-leave, and the expression “immediate lessor” shall be construed accordingly;

See Section 20, Sub-section (2) (a), and Sub-section (4), notes.

The expression “working year” means the year ending the thirtieth day of September, or such other day as may in any case be approved by the Commissioners; and the expression “last working year” means the working year completed immediately before the first day of January in any financial year for which the duty is paid:

See Section 20, Sub-section (2) (a), (b), and (c).

The expression “mineral way-leave” means any way-leave. air-leave, water-leave, or right to use a shaft granted to or enjoyed

by a working lessee, whether above or under ground, for the purpose of access to or the conveyance of the minerals, or the ventilation or drainage of his mine or otherwise in connection with the working of the minerals.

See Section 20. Sub-section (1). "Working lessee" is apparently to be read in relation to the first, not the second, part of the definition of the term, *supra*.

Where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if the minerals are being worked by the proprietor, or which the lessee has power to work if the minerals are being worked by a lessee, and which would, in the ordinary course of events, be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date.

Minerals which are being won for the purpose of being immediately worked shall be deemed to be minerals which are being worked.

See Section 20, Sub-section (2) (b), notes, and Sub-section (3); Section 22, Sub-sections (1), (2), (3), and (7); Section 23, Sub-sections (1), (2), and (3).

Minerals shall be deemed to be comprised in a mining lease if the right to work the minerals is the subject of a mining lease, or if the minerals are being worked under the terms of such a lease, although the lease has expired.

See Section 22, Sub-sections (1), (2), (3), and (7) ; Section 23, Sub-sections (2) and (3).

Where the circumstances of a district are such that in the opinion of the Commissioners it is impracticable to fix any sum which satisfactorily represents a rent customary in the district, the rent which would be paid under similar circumstances and ordinary conditions elsewhere than in the district shall be substituted for the rent customary in the district

See Section 20. Sub-section (2) (b), and proviso.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS AND DEFINITIONS

(SECTIONS 35 TO 42, 62, 91, 93, 94, AND 96).

SUMMARY OF THE SECTIONS.

EXEMPTION from all land duties is granted in respect of land held by rating authorities, and increment value duty which would have been collected is deemed to have been paid (Section 35).

Provision is made for the deduction of capital sums paid in respect of "betterment" from increment value for purposes of increment value duty, from site value for purposes of undeveloped land duty and from the value of the benefit accruing for purposes of reversion duty; in the case of increment value duty the duty on the amount deducted being deemed to have been paid (Section 36).

In the case of land held by bodies constituted for charitable purposes, by registered societies (as defined), and by companies precluded from dividing profit, an exemption is given from reversion duty and undeveloped land duty while the land is occupied and used by the body, society, or company for its purposes; and from increment value duty on periodical occasions while the land is held for the purposes of the body, society, or company, whether occupied and used by the body, &c.,

or not (Section 37). Increment value duty which would have been collected on such occasions is not deemed to have been paid.

Exemption is given from increment value duty, reversion duty, and undeveloped land duty in respect of land while held by a statutory company for its purposes, but not when such land is sold or ceases to be so held (Section 38, Sub-section (2)). Statutory companies need only make a return of the actual cost of their land, which is substituted for the original site value (Section 38, Sub-section (2)). But increment value duty which would have been collected is not deemed to have been paid.

Power is given to a trustee, or a tenant for life of settled land, to charge the amount paid by him, or which he may be liable to pay, in respect of increment value or reversion duty, together with reasonable expenses, upon the land (Section 39, Sub-sections (1) and (2)); and to a mortgagee to add the amount he may be liable to pay, together with costs and expenses properly incurred, to his security (Section 39, Sub-section (4)).

The application of the Act to copyholds and customary freeholds is governed by Section 40; the terms used in the Act are defined in Section 41; allowance is to be made for the amount of increment value duty payable on death in determining the value of the estate for estate duty as if the amount of increment value duty were a debt (Section 62); and there are general provisions as to rules and penalties (Sections 93 and 94).

Supplemental.

Exemption
for land
held by
rating
authorities.

35. (1) No duty under this Part of this Act shall be charged in respect of any land or interest in land held by or on behalf of a rating authority, or any statutory combination representative of two or more local or rating authorities, and any increment value duty in respect of any such land which would have been collected from the authority (whether on the occasion of the transfer on sale of the land, or any interest in the land, or the grant of a lease of the land, or on the periodical occasions provided in this Act) shall, for the purposes of the provisions of this Act as to the collection of increment value duty, be deemed to have been paid.

Land, Interest.—See Section 41, pp. 207, 210, and Section 26, Sub-section (1), note, p. 7.

No Duty shall be Charged; but the land is not exempt from valuation (*cf.* Section 26, Sub-section (1), note “Land”). Rating authorities must therefore furnish returns under Section 26, Sub-section (2), and present the instrument or particulars on a transfer or lease under Section 4, Sub-section (2); but they need not deliver the account required on periodical occasions under Section 6 (see Section 6, Sub-section (5), p. 96). On periodical occasions, therefore, there can be no assessment of increment value duty, and consequently no duty which can be “deemed to have been paid”; but this does not matter, as on any sale or lease no such duty is payable, and no credit is required for previous payments. But on such sale or lease it is, of course, essential that the amount which would, but for the exemption, be paid should be ascertained and “deemed to have been paid,” for the buyer or lessee may in future be liable to duty, and clearly is entitled to credit for everything payable on the increment which accrued before he bought the land or took the lease. But the insertion of the words “shall

be deemed to have been paid" seems in this place to be unnecessary. On the occasion of a sale or lease Section 4 must be applicable, and by Section 4, Sub-section (4), duty assessed under that section is deemed to have been paid; and as no account is to be delivered under Section 6, Sub-section (2), there can be no duty "assessed by the Commissioners on an account delivered" under that section, and, therefore, nothing to which the words "shall be deemed to have been paid" in either Section 6, Sub-section (4), or the present section can be applied. *Cf.* Section 7, note, p. 100 (where the words are omitted), Section 8, Sub-section (5) (where they appear), Section 9 (where they are omitted), Section 10, Sub-section (1) (where they appear), Section 11 (where they are omitted), Section 36 (where they appear), and Sections 37 and 38 (where they are omitted).

Whether on the Occasion, &c.—See Section 1, p. 56.

(2) For the purposes of this section the expression "rating authority" means any body who have power to raise a rate or administer money raised by a rate; and the expression "rate" means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument, requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The definition of a rate is identical with that contained in The Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16). Section 9.

36. Where in pursuance of any public general or local Act any capital sum or any instalment of a capital sum has been paid to any rating authority

Deduction
from
increment
value
of sum

paid to
rating
authority in
respect of
increase in
value.

in respect of the increased or enhanced value of any land due to any improvements made or other action taken by the authority, the amount of that capital sum or instalment shall be deducted from any increment value of the land for the purposes of the collection of increment value duty and from the site value of the land for the purposes of the collection of undeveloped land duty, and from the value of the benefit accruing to the lessor for the purposes of reversion duty, and in the case of increment value duty the duty on the amount deducted shall be deemed to have been paid.

Rating Authority.—Presumably the definition of “rating authority” in Section 35, Sub-section (2), is intended to be applicable, though it is expressed to be applicable for the purposes of that section.

Increment Value.—See Section 2, Sub-section (1), p. 67.

Undeveloped Land Duty.—See Section 16, p. 133.

Value of the Benefit.—See Section 13, p. 115.

Deemed to Have Been Paid.—See Section 35, Sub-section (1), note, and Section 7, note, p. 100. The words here seem unnecessary.

The Acts referred to are, *e.g.*, The London County Council (Tower Bridge, Southern Approach) Act, 1895, 58 & 59 Vict., c. cxxx. (Section 36); London County Council (Improvements) Act, 1897, 60 & 61 Vict. c. cclxii. (Section 42), and a similar Act in 1899 (62 & 63 Vict. c. cclxvi.); and *cf.* The Housing, Town Planning, &c., Act, 1909, 9 Edw. VII. c. 44 (Section 58, Sub-section (3)), “Where, by the making of any town planning scheme any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any) limited by the scheme . . . shall be entitled to recover from any person whose property is so increased in value one half of the amount of that increase.”

37. (1) No reversion duty or undeveloped land duty under this Part of this Act shall be charged in respect of land or any interest in land held by or on behalf of any governing body constituted for charitable purposes while the land is occupied and used by such a body for the purposes of that body, and increment value duty shall not be collected on any periodical occasion in respect of the fee simple of or any interest in any land held for the purposes of such a body, whether it is occupied or used by that body or not, without prejudice, however, to the collection of the duty on any other occasion.

Special provision for land held for charitable purposes, &c.

The expression “governing body constituted for charitable purposes” includes any person or body of persons who have the right of holding, or any power of government of, or management over, any property appropriated for charitable purposes (including property appropriated for the purpose of any of the naval or military forces of the Crown), and includes any corporation sole and all universities, colleges, schools, and other institutions for the promotion of literature, science, or art.

Reversion Duty.—See Section 13, p. 115.

Undeveloped Land Duty.—See Section 16, p. 133.

Increment Value Duty.—See Section 1, p. 56.

The land held by bodies constituted for charitable purposes and by the registered societies or companies referred to in Sub-section (2) is divided into two categories:—

- (a) Land occupied and used by the body for its purposes.
This is exempt from reversion duty and from undeveloped

land duty, and from the payment of increment value duty on the periodical occasions referred to in Section 1. Sub-section (c), so long as it is so occupied and used.

- (b) Land not occupied and used by the body for its purposes or at all; *c.g.* land which is let to tenants. This is liable to reversion duty and undeveloped land duty like other land, and to increment value duty if it (or any interest in it) is sold, leased, or passes on death, but not on the periodical occasions referred to in Section 1, Sub-section (c), and Section 6.

In this section there is no provision that for purposes of increment value duty the duty payable on the periodical occasions shall be deemed to have been paid (*cf.* Section 35, Sub-section (1), note, and Section 7, note, p. 100). The omission seems to be intentional (*cf.* the words "without prejudice to the collection. &c."), and the words cannot be filled in by reference to Section 6, Sub-section (4), for the duty not being collectable the body delivers no account under Section 6, Sub-section (2), and Section 6, Sub-section (4), and therefore does not come into operation. The result is that if, having been exempted from duty on periodical occasions, the body sells its land, it forfeits all the exemption and pays duty on the basis of the whole of the increment since 1909 (deducting, of course, any duty it may have paid on previous occasions).

By or on Behalf of.—*I.e.* the governing body may be either the owners or the managers under a trust, and by the definition a single person may be such body.

Charitable Purposes in their recognised legal meaning include religious and educational purposes. (See *Tudor Charities and Mortmain*, 4th ed., p. 35 *et seq.* and p. 418.)

All decisions under this section seem subject to appeal (Section 33, Sub-section (1), p. 26, and Section 9, note, p. 107).

(2) This section shall apply to the fee simple of, or any interest in, any land held by a registered society or by a company within the meaning of The Companies (Consolidation) Act, 1908, or any body of persons incorporated by special Act, if that

company or body are by their memorandum or Act precluded from dividing any profit amongst their members, as if the purposes of the society, company, or body of persons were charitable purposes.

In this provision the expression "registered society" means any society or body of persons who are registered, or whose rules are certified or registered, by a registrar of friendly societies in pursuance of any Act of Parliament, and who by their rules make provision for the benefits set out in section eight, sub-section one, of The Friendly Societies Act, 1896, and where the contract between the society and the member is of a permanent character. 59 & 60 Vict.
c. 25

Registered Society.—Under Section 8 of The Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), power is given to register friendly societies as therein defined, cattle insurance societies, benevolent societies, working men's clubs, and "specially authorised societies," as defined in the Act.

Various other societies are or may be registered by a Registrar of Friendly Societies; but in addition to being so registered a society must, in order to obtain the exemption provided for by this section, make provision for the benefits set out in Section 8. Sub-section (1). of The Friendly Societies Act, 1896. which is as follows:—

8. (1) Societies (in this Act called "Friendly Societies") for the purpose of providing by voluntary subscriptions of the members thereof, with or without the aid of donations, for—

(a) The relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age (which shall mean any age

after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority; or

- (b) Insuring money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the husband, wife, or child¹ of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning; or
- (c) The relief or maintenance of the members when on travel in search of employment, or when in distressed circumstances, or in case of shipwreck, or loss or damage of or to boats or nets; or
- (d) The endowment of members or nominees of members at any age; or
- (e) The insurance against fire, to any amount not exceeding fifteen pounds, of the tools or implements of the trade or calling of the members.²

Provided that a friendly society which contracts with any person for the assurance of an annuity exceeding fifty pounds per annum, or of a gross sum exceeding two hundred pounds, shall not be registered under this Act.

Further, the contract between the society and the member must be of a permanent character, which would appear to exclude "dividing societies" which at the end of stated periods divide up their benefits among the members.

By a Company, &c.—By Section 285 of The Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), a company "means a company formed and registered under this Act or an existing company," and an existing company means "a company formed and registered under the Joint Stock Companies Acts or under The Companies Act, 1862."

¹ Subject to limitations as to amount (Section 62).

² To this is added by The Friendly Societies Act, 1908 (8 Edw. 7, c. 32), Section 1:—(f) Guaranteeing the performance of their duties by officers and servants of the society or any branch thereof.

38. (1) Neither increment value duty, reversion duty, nor undeveloped land duty shall be charged in respect of any land whilst it is held by a statutory company for the purposes of their undertaking and cannot be appropriated by the company except to those purposes; but nothing in this provision shall prevent the collection of increment value duty when any such land is sold or ceases to be so held.

Special
provision
for
statutory
companies.

This provision shall not be construed so as to exclude from the benefit thereof land held by a statutory company which is intended to be ultimately appropriated for the purpose of works forming or to form part of the company's undertaking, but, pending the carrying out of those works, is used for other purposes.

Increment Value Duty.—See Sections 1 and 2, pp. 56, 67. So long as the company holds the land for the purposes of its undertaking, no increment value duty is chargeable on the periodical occasions (see Section 1, Sub-section (c), and Section 6); but if the company sells the land or any interest in the land, or leases the land, so as to create an occasion under Section 1, Sub-section (a), and so that the land ceases thereupon to be held for the purposes of the undertaking, duty is payable. Apparently a transfer of an interest which does not result in any interference with the use of the land for such purposes does not involve liability to duty; and by the second part of the above sub-section it would appear that though the land is not at present used for the purposes of the undertaking, yet so long as there is an intention to appropriate it ultimately to such purposes, it may be dealt with in any way short of actual transfer on sale without involving liability to the duty.

The words “shall be deemed to have been paid” are, it is to be noted, omitted in this section, and (for the same reason as in the case of charitable bodies, &c., in Section 37) they cannot

be filled in by reference to Section 6, Sub-section (4), in the case of duty payable on "periodical occasions"; though on other occasions Section 4, Sub-section (4), will apparently be applicable.

Reversion Duty.—See Section 13, p. 115. Such duty, being payable on the determination of a lease, does not seem applicable to land while held by the company for the purposes of the undertaking, but possibly there may be cases under the second paragraph of the sub-section in which the duty might but for this exemption be payable.

Undeveloped Land Duty.—See Section 16, p. 133.

From mineral rights duty (Section 20) there is no exemption, but "land whilst it is held, &c.," clearly includes minerals, but only so long as they are held for the purposes of the undertaking. For such time, therefore, they are exempt from increment value duty.

Though exempt from the duties specified in this section, the land is subject to valuation, with the modification contained in Sub-section (2), *infra*.

Statutory Company.—As defined in Sub-section 4, *infra*.

For the Purposes of their Undertaking.—For cases on the meaning of these words see Browne and Allen, *The Law of Compensation*, 2nd ed., p. 31 (notes to Section 18 of The Lands Clauses Consolidation Act, 1845), and as to the temporary use of land for other purposes, and the question when land becomes "superfluous," see *ibid.*, p. 254 (notes to Section 127 of the same Act).

All decisions under this section seem subject to appeal (Section 33, Sub-section (1), p. 26).

(2) The Commissioners shall not require a statutory company to make any returns with respect to any such land for the purpose of the provisions of this Part of this Act as to valuation other than as to the actual cost to the company

of the land, and that cost shall, for the purposes of this Part of this Act, be substituted for the original site value of the land.

On "periodical occasions" no account of increment value need be delivered at all (Section 6, Sub-section (5)). The "returns" referred to are those specified in Section 26, Sub-section (2). But as the returns from the making of which such companies are exempted are only those required "for the purposes of the provisions of this Part of this Act as to valuation" (*semble*, only Sections 25 to 32) returns and particulars required by other sections of the Act must apparently be made and presented by such companies, with the exception of the account required by Section 6, Sub-section (2). For instance, the instrument or particulars on a transfer or lease must be presented under Section 4, Sub-section (2), for stamping, and possibly the account required under Section 15, Sub-section (2) (but as no reversion duty will be payable this is doubtful; see note to that sub-section). The particulars required by Section 20, Sub-section (3), for purposes of mineral rights duty must certainly be furnished, as there is no exemption from that duty; and such a company, as a proprietor of minerals, may specify their nature and give an estimate of their capital value under Section 23, Sub-section (2).

Original Site Value (see Section 27).—Where minerals are concerned their cost will apparently be substituted for their "original capital value" (*cf.* Section 23, Sub-section (4)). From the use of the word "original" two alternative conclusions might be drawn, either that the ordinary rules are to apply on periodical valuations of undeveloped land under Section 28, and that for this purpose therefore the company must give particulars under Section 26, Sub-section (2), like any other owner; or that no such periodical valuations are to be made during the period of exemption, the cost continuing to be treated as the site value throughout. The latter seems the more probable interpretation, for the former involves a contradiction of the words "shall not require a statutory company to make any returns, &c."

(3) For the purposes of the Land Clauses Acts as incorporated with any special Act, the amount

(if any) payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land, and shall not be taken into account in assessing the compensation to be paid to the transferor.

By Section 82 of The Lands Clauses Consolidation Act, 1845. "the costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title."

In Assessing the Compensation.—See Section 63 of The Lands Clauses Consolidation Act, 1845; and Browne and Allen, *The Law of Compensation*, 2nd ed., p. 97 *et seq.*

(4) For the purposes of this section the expression "statutory company" means any railway company, canal company, dock company, water company, or other company who are for the time being authorised under any special Act to construct, work, or carry on any railway, canal, dock, water, or other public undertaking, and includes any person or body of persons so authorised; and the expression "special Act" includes any Provisional Order or order having the force of an Act of Parliament.

Special Act.—As used in The Lands Clauses Consolidation Act, 1845, this is defined by Section 2 of that Act to mean "any Act which shall be hereafter passed which shall authorise

the taking of lands for the undertaking to which the same relates, and with which this Act shall be incorporated”

For the purposes of the present Act, however, the essential characteristic of a “special Act” is not authority to take land, but authority to “construct, work, and carry on, &c.”

39. (1) Where the fee simple of any land, or any interest in land, in respect of which increment value duty or reversion duty is charged, is settled land within the meaning of The Settled Land Act, 1882, or is vested in a trustee, and the tenant for life, or persons having the powers of a tenant for life, or the trustee, is the person who is liable to pay any sums on account of either of these duties, he shall be entitled to charge by deed upon the land or interest in land any amount paid by him, or which he may then be or may thereafter become liable to pay, in respect of either of these duties, and the amount of any expenditure which he may have reasonably incurred in connection with the valuation, and the benefit of any such charge, may be transferred in like manner as a mortgage.

Power to charge duty on land in certain cases.
45 & 46 Vict. c. 38.

Fee Simple, Interest.—See Section 41.

Settled Land.—The following are the chief provisions of The Settled Land Act, 1882 (45 & 46 Vict. c. 38) to which reference must be made:—

2. (1) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of Court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of

this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates, or is for the purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

- (2) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.
- (3) Land and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

* * * * *

- (5) The person who is, for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.
- (6) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

* * * * *

- (8) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement. (*For the persons who are "trustees of the settlement" in default of there being any such persons as above described see Settled Land Act, 1890, Section 16.*)

* * * * *

(10) In this Act—

(i.) “Land” includes incorporeal hereditaments,¹ also an undivided share in land; “income” includes rents and profits; and “possession” includes receipt of income.

(ii.) “Rent” includes yearly or other rent, and toll, duty, royalty, or other reservation by the acre or the ton or otherwise²

* * * * *

(xi.) “Person” includes corporation.

* * * * *

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

20. (1) On a mortgage, or charge, the tenant for life may, as regards land mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees convey or create the same by deed for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the mortgage, or charge.

(2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

¹ But by the definition of land in the present Act incorporeal hereditaments are excluded (Section 41).

² Cf. the same definition in The Conveyancing Act, 1881, Section 2 (ix.), which is adopted for the purposes of the present Act by Section 41.

- (ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
- (iii.) All leases and grants at fee farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

* * * * *

31. (1) A tenant for life—

- (i.) May contract to make any mortgage, or charge.

* * * * *

- (2) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor

* * * * *

36. The Court may, if it thinks fit, approve of any action, defence or other proceeding taken or proposed to be taken for protection of settled land and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

* * * * *

45. (1) A tenant for life when intending to make a mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life,

by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the . . . mortgage, or charge, or of a contract for the same.

- (2) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

* * * * *

58. (1) Each person, as follows, shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act : namely—

(There follows a list of limited owners).

* * * * *

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

* * * * *

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person entrusted by virtue of the Queen's sign-manual with the care and commitment of the custody of the persons and estates of lunatics, exercise

the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

See also Section 63 (Settlement by way of trust for sale), subject to Section 7 of The Settled Land Act, 1884 (47 & 48 Vict. c. 18).

By Section 11 of The Settled Land Act, 1890 (53 & 54 Vict. c. 69), it is provided that "where money is required for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required, and also the amount properly required for payment of the costs of the transaction on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or any part thereof, or otherwise, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly."

(2) In the case of settled land a deed executed for the purposes of this section shall not take effect until notice thereof has been given to the trustees of the settlement for the purposes of The Settled Land Act, 1882.

See Section 45 of The Settled Land Act, 1882, set out *supra*.

(3) Sections fifty-nine, sixty, and sixty-two of The Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), shall apply to the exercise of the power under this section in the same manner as they apply to the exercise of the powers of a tenant for life under that Act.

The sections referred to are set out in the note to Sub-section (1), *supra*.

(4) Where the fee simple of any land, or any interest in land in respect of which increment value duty or reversion duty is charged, is vested in a mortgagee who is liable to pay any sum on account of either of those duties, he shall be entitled to add to his security the sum for which he is so liable, including any costs or expenses properly incurred by him in respect of the payment of the duty.

When a mortgagee has foreclosed, he is the owner of the land or interest, and, being under no further liability to account, does not require the power given to him under the present sub-section. In the case of reversion duty he receives the allowance provided for in Section 14, Sub-section (5), p. 125. See also Section 14, Sub-section (1).

But, apart from foreclosure, he may, by going into possession or exercising his powers of sale or leasing (Conveyancing and Law of Property Act, 1881. Sections 18, 19, 20, and 21), be a transferor or lessor under Section 4. or a person accountable under Section 5 (which incorporates the provisions of The Finance Act, 1894, as to the collection of estate duty), or (if a body corporate or unincorporate) may be a holder of the fee simple or of an interest under Section 6, or a lessor for the purposes of reversion duty under Section 15. As, however, his interest in the land is limited to the amount of his principal, interest and costs, he is protected by the present sub-section from any loss of such amount by being enabled to add the amount of the duty, together with costs and expenses properly incurred, to his mortgage debt. But he will only be protected in so far as the margin of his security is sufficient to bear the amount so to be added. Whether costs and expenses of disputing a claim for duty are properly incurred will be a question between himself and the mortgagor. It will not, as a rule, be worth his while to incur such costs and expenses, if the security can bear the amount of the duty, without previously obtaining the mortgagor's assent.

(5) In Scotland, where any person, having a limited interest in the land or interest in land

in respect of which any duty under this Part of this Act is charged, is the person who is liable to pay any sums on account of the duty, he shall be entitled to charge such land or such interest in land by means of a bond and disposition or bond and assignation in security in his own favour which he is hereby authorised to grant.

Application
of Part I. to
copyholds.

40. The following provisions shall have effect with respect to the application of this Part of this Act to copyholds, including customary freeholds:—

- (1) In the case of copyholds of inheritance, and copyholds held for a life or lives or for years where the tenant has a right of renewal, and customary freeholds—

(a) The total and site values of the land shall be ascertained as if the land were freehold land, subject to a deduction of such an amount as is proved to the Commissioners to be equal to the amount which it would cost to enfranchise the land;

(b) References to the fee simple of land shall be treated as references to the whole copyhold or customary interest or estate;

(c) In the definition of “owner,” a reference to the person entitled to the

rents and profits of the land as tenant by copy of court roll or customary tenure shall be substituted for the reference to the person entitled to the rents and profits of the land in virtue of an estate of freehold:

- (2) In the case of copyhold land held for a life or lives, or for years where the tenant has not a right of renewal, this Part of this Act shall have effect as if the land were freehold land and the copyhold interest were a leasehold interest.

Total Value, Site Value.—See Section 25, Sub-sections (3) and (4), p. 41.

Owner.—See Section 41.

41. In this Part of this Act, unless the context Definitions. otherwise requires—

The expression “land” does not include any incorporeal hereditament issuing or granted out of the land;

See Section 26, Sub-section (1), note, and Interpretation Act, 1889, Section 3.

See the definition of “interest,” *infra*.

“Sporting rights” are included in “incorporeal hereditaments.”

The expression “rentcharge” means tithe or tithe rentcharge, or other periodical payment or rendering in lieu of or in the

nature of tithe, or any fee farm rent, rent seck, quit rent, chief rent, rent of assize, or any other perpetual rent or annuity granted out of land;

These incorporeal hereditaments are included in the definition of a "fixed charge," *infra*, and by reference excluded from the definition of an "interest" in land. Dealings in them, therefore, do not create occasions on which increment value duty is to be calculated and paid under Section 1, but the amount by which their existence reduces the value of land is to be taken into account in arriving at "total value," and consequently "site value" (Section 25, Sub-section (3)).

The word used being "means," this definition is exhaustive.

44 & 45 Vict.
c 41.

The expression "rent" has the same meaning as in The Conveyancing and Law of Property Act, 1881, and does not include a rentcharge.

By Section 2, Sub-section (ix.), of the above Act, "Rent includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise."

In relation to minerals see the definition in Section 24, p. 181, which incorporates the definition of "fine" contained in the same section of the Conveyancing Act ("Fine" includes premium or foregift and any payment, consideration, or benefit in the nature of a fine, premium, or foregift").

The word used being "includes," this definition is not exhaustive.

The expression "lease" includes an under-lease and an agreement for a lease or under-lease, but does not include a term of years created solely for the purpose of securing

money until the term becomes vested in some person free from any equity of redemption;

See Section 1, Sub-section (a), note.

But does not include, &c.—As originally drafted, the paragraph ended at the word “money.” and the further words were added to meet the case, for instance, where the mortgagee of the term forecloses and becomes, in the case of a long term of years, the “owner” within the meaning of the definition of that word, *infra*. Apparently, therefore, on the foreclosure, there is a transfer of a lease creating an “occasion” on which increment value duty is payable under Section 1, and on the termination of the lease reversion duty becomes payable. Presumably the value of the consideration for the lease is to be calculated on the basis of the amount of the loan (see Section 2, Sub-section (2) (b); Section 2, Sub-section (3); Section 13, Sub-section (2)), regard being had to the fact that the lease is a security, and therefore, presumably, of a higher value than the amount secured. If the mortgagee sells the lease, the same considerations will apply; but the Act gives no instructions on the points which arise.

The word used being “include,” this definition is not in terms exhaustive.

The term of a lease shall, where the lease contains an obligation to renew the lease, be deemed to include the period for which the lease may be renewed, and, in the case of a lease for life or lives, shall be deemed to be a number of years equal to the mean expectation of life of the person for whose life the lease is granted, or, in the case of a lease granted for lives, of the youngest of the persons for whose

lives the lease is granted, and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined;

See Section 1, Sub-section (a); Section 13, Sub-section (1); Section 14, Sub-sections (1), (2), and (3); and Section 40, Sub-section (2).

Cf. also the definition of a mining lease (Section 24), which is an addition to, and not substituted for, the present and the preceding definitions.

The expression "interest" in relation to land includes any undivided share in a fee simple in possession and includes a reversion expectant on the determination of a lease, but does not include any other interest in expectancy or an incumbrance as defined by this Act or any fixed charge as defined by this Act or any purely incorporeal hereditament or any leasehold interest under a lease for a term of years not exceeding fourteen years or any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts;

See Section 1; Section 2, Sub-section (2) (b), (c), and (d); Section 25, Sub-section (3); Section 27, Sub-section (5); and Sections 35 and 37.

The general effect of this definition (which, however, so far as it is affirmative, is not expressly exhaustive) is to limit the occasions on which increment value duty can be collected (in

addition to transfers of the fee simple and grants and transfers of leases (Section 1)) to dealings in undivided shares in the fee simple and in reversions on leases (subject, of course, to the limitations as to the length of the leases contained in the Act). The special object in view was to exclude (under the words "purely incorporeal hereditaments") dealings in sporting rights (Hansard, 1909, Commons Debates, Vol. X., col. 374). Easements, too, as "purely incorporeal hereditaments" (see *Gale on Easements*, p. 6). are excluded. Certain incorporeal hereditaments are to be taken into account in so far as they reduce the value of land in ascertaining "total value" (see Section 25, Sub-section (3)).

For the exclusion, for purposes of increment value duty, of leases of separate tenements, flats, or dwellings see Section 11, p. 110.

Land Law (Ireland) Acts.—See The Short Titles Act, 1896 (59 & 60 Vict. c. 14), Section 2 and Second Schedule.

A "person interested" is presumably a person having an interest as above defined (*cf.* Section 27, Sub-section (5)); but it is to be noted that, as used in Section 25, Sub-section (4) (*b*) and (*c*), the expression must include "owner," and in Section 27, Sub-section (5), it is considered necessary expressly to except "owner" from its meaning (*cf.* also Section 30, Sub-section (2)).

The expression "incumbrance" includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or any capital or annual sum, but does not include a fixed charge as defined by this Act;

See Section 25, Sub-section (1).

The expression "fixed charge" means any rentcharge as defined by this Act, and any burden or charge (other than rates or taxes) arising by operation of law or

imposed by any Act of Parliament, or imposed in pursuance of the exercise of any powers or the performance of any duties under any such Act, otherwise than by a person interested in the land or in consideration of any advance to any person interested in the land:

See Section 25, Sub-section (3).

The expression "fee simple" means the fee simple in possession not subject to any lease, but does not include an undivided share in a fee simple in possession;

The expression "owner" means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold, except that where land is let on lease for a term of which more than fifty years are unexpired, the lessee under the lease or if there are two or more such leases the lessee under the last created under-lease shall be deemed to be the owner instead of the person entitled to the rents and profits as aforesaid:

See Section 8, Sub-sections (1), (2), and (4), where this definition is extended for the purposes of that section; Section 16, Sub-section (2) (b); Section 17, Sub-section (3) (d); Section 18 (a case of a similar extension); Section 19; Section 26; Section 27, Sub-sections (1), (2), (5), and (7); and Section 31, Sub-section (4).

For the case of copyholds see Section 40, Sub-section (1) (c).

In the case of minerals, the corresponding term is "the proprietor" (Section 20, Sub-sections (2) (b), (3), and (4); Section 22, Sub-section (6); Section 23, Sub-sections (2) and (3); and Section 24).

In Section 25, Sub-section (4) (b) and (c), and Section 30, Sub-section (2), "person interested" must include "owner" (see also Section 27, Sub-section (5)); and in Section 29, Sub-section (2), the expression "any person entitled to the fee simple of any land" is used.

The expressions "lessor" and "lessee" include an under-lessor and under-lessee; and the expression "lessor" includes the person for the time being entitled to the reversion, whether freehold or leasehold, expectant on the determination of the lease; and the expression "lessee" includes executors, administrators, and assigns of the lessee;

See Section 4, Sub-sections (1), (2), (4), and (6); Sections 13, 14, and 15; and Section 27, Sub-section (7).

For the use of the words in relation to minerals see Section 20, Sub-sections (2) and (4); Section 21; Section 22, Sub-sections (4) and (6); and Section 24.

For copyholds see Section 40, Sub-section (2).

The expressions "transferor" and "lessor" do not include any persons who join in the execution of the instrument by which the transfer or lease is effected, or agreed to be effected, for the purpose only of conveying any estate vested in them as trustees or incumbrancers, or of

45 & 46 Vict.
c. 38.

acknowledging the receipt of the consideration money, or of giving consent, and sections fifty-nine, sixty, and sixty-two of The Settled Land Act, 1882 (which relate to the exercise of powers on behalf of infants and lunatics), shall apply to the exercise of the powers of an owner under this Part of this Act in the same manner as they apply to the exercise of the powers of a tenant for life under that Act;

Transferor.—See Section 4, and Section 38, Sub-section (3).

Settled Land Act.—See the sections set out in note to Section 39.

The expression “agriculture” includes the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments; and the expression “agricultural land” shall be construed accordingly.

See Section 7; Section 8, Sub-section (2); Section 14, Sub-section (2); Section 16, Sub-section (2); Section 17, Sub-sections (2) and (5); Sections 18 and 25; and Section 26, Sub-section (1).

The word used being “includes.” the definition is not exhaustive.

Application
of Part I. to
Scotland.

42. In the application of this Part of this Act to Scotland, unless the context otherwise requires—

(1) The expression “land” does not include teinds, titles or offices of honour, or any

servitude, superiority, casualty, feu duty, or ground annual, or any incorporeal heritable right ;

The expression “rent” includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise ; and, for the purpose of section thirty-one of this Act, includes feu duty and ground annual ;

The expression “rentcharge” includes feu duty and ground annual ;

The expression “interest” in relation to land includes the landlord’s right of reversion to the subjects let on the determination of the lease, but does not include teinds, servitudes, superiorities, any interest in expectancy, whether vested or not, heritable securities, bonds of provision, jointures, annuities, or other capital or annual sums, or other debts secured upon heritage, or any sporting right, or any lease thereof ;

The expression “owner” means the fiar of the land, except that where land is let on lease for a term of which more than fifty years are unexpired, the tenant under the lease shall be deemed to be the owner, and includes an institute or heir of entail in possession ;

The expression "freeholder" includes "fiar," "life-renter of land settled within the meaning of The Finance Act, 1894," and "institute or heir of entail in possession," and the expression "freehold" shall be construed accordingly;

The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage, and the expression "incumbrancer" shall be construed accordingly;

"Servitudes" shall be substituted for "easements" and shall be deemed to include public rights;

"Local Government Board for Scotland" shall be substituted for "Local Government Board";

The expression "borough or urban district" means a royal, parliamentary, or police burgh;

A reference to an appeal to quarter sessions shall not apply;

"Court of Session" shall be substituted for "High Court": Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands

(Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such judges shall be to the House of Lords, and in sub-sections (2), (3), and (4) of section ten of The Finance Act, 1894, as applied with reference to any such appeal the said judges shall be substituted for the High Court. "Sheriff Court" shall be substituted for "County Court," and there shall be an appeal from the sheriff court to the said judges, whose decision in such case shall be final.

57 & 58 Vict.
c. 30.

- (2) Any order of a referee as to expenses shall be enforceable as a recorded decree arbitral.
- (3) Sub-section (2) of section two of this Act shall be construed as if after paragraph (d) thereof the following paragraph were added (that is to say):—

(e) where the occasion is the grant of any feu of the land or the creation of any ground annual thereon, the value of the fee simple of the land calculated on the basis of the value of the consideration for such grant or creation, by way of feu duty, ground annual, or otherwise.

Where increment value duty falls to be collected on a feu contract or feu charter or a contract of ground annual, it shall be paid by the person by whom or on whose behalf the feu is granted or the ground annual is created, and, for the purposes of this Part of this Act, that person shall be deemed to be the transferor or the transferor on sale and the contract or charter to be the instrument, and the expressions "transfer" and "transfer on sale" shall be construed accordingly.

The expressions "lessor" and "lessee" include a sub-lessor and sub-lessee and the heirs, executors, administrators, and assigns of a lessor and lessee respectively.

- (4) Where arrangements are made under section four of this Act for dispensing with the presentation of any instrument or particulars thereof, it shall be the duty of the keeper of the general register of of sasines, and of the respective keepers of burgh or other local registers, to furnish to the Commissioners particulars of instruments presented for registration or registered in their respective registers as may be prescribed by regulations of the Commissioners, and in such case the provisions of sub-section (3) of section four shall not apply.

PART III.

DEATH DUTIES.

* * * * *

62. Where increment value duty is to be collected on the occasion of the death of any person in respect of the fee simple of any land or any interest in land comprised in the property passing on the death of that person, allowance shall be made in determining the value of the estate for the purposes of estate duty under sub-section (1) of section seven of the principal Act, for the amount of increment value duty so to be collected as if it were a debt.

Deduction
of amount
paid for
increment
value duty
from value
of estate for
purposes of
estate duty.

The Principal Act.—*I.e.* The Finance Act, 1894.

Section 7, Sub-section (1). of that Act is as follows:—

In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

- (a) For debts incurred by the deceased or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor
- (b) For any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor
- (c) More than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

PART VII.

PROVISIONS AS TO PAYMENTS TO LOCAL AUTHORITIES
AND TO ROAD IMPROVEMENT ACCOUNT.

* * * * *

Payment of
half the
proceeds of
the duties
on land
values for
benefit of
local
authorities.

91. (1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum equal to one half of the net proceeds of the duties on land values under Part I. of this Act (including mineral rights duties).

(2) The sums so charged shall be carried to a separate account, to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury in respect of accounts, audit, and accumulation of moneys standing to the account, be appropriated for the benefit of local authorities in the United Kingdom in such manner as Parliament may hereafter determine.

PART VIII.

GENERAL.

* * * * *

Laying of
rules and
regulations
before
Parliament.

93. (1) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commissioners of Customs

and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(2) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable, shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to reassess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

Penalty for making false statement or representation.

Repeal, construction,
and short
title.

96. (2) Any reference to “the Commissioners” in Part II., Part VI., or Part VII. of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to “the Commissioners” in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

* * * * *

(7) This Act may be cited as “The Finance (1909-10) Act, 1910.”

APPENDIX A.

INCREMENT VALUE DUTY.

REGULATIONS MADE BY THE COMMISSIONERS OF INLAND
REVENUE UNDER SECTION 4.

Presentation of Instruments.

(1) Having regard to the provisions of The Finance (1909-10) Act, 1910, with respect to Increment Value Duty, it is necessary that, on the occasion of any transfer on sale of the fee simple of any land or of any interest in land, in pursuance of any contract made after the commencement of the Act, or on the grant, in pursuance of any contract made after the commencement of the Act, of any lease of any land, for a term exceeding fourteen years, *the transferor or lessor* shall present to the Commissioners of Inland Revenue the instrument by means of which the transfer or the lease is effected or agreed to be effected, or reasonable particulars thereof, for the purpose of the assessment of Increment Value Duty thereon. The land in question is only such as is situate within the United Kingdom. (Where a building is used for the purpose of separate tenements, flats, or dwellings, the grant of a lease, or the transfer on sale of any lease, of any such separate tenement, flat, or dwelling, will not be an occasion requiring presentation of the instrument. Section 11.)

These Regulations do not apply in the case of the grant of a Mining Lease, as to which reference should be made to the special provisions contained in the Act.

(2) Under arrangements made by the Commissioners the instrument, or the required particulars thereof, may be presented at any of the following Stamp Offices:—

London (Somerset House, Wellington Street entrance. or Telegraph Street, E.C.).				
Edinburgh (Waterloo Place).				
Dublin (Custom House and Four Courts).				
Birmingham, the Office of the Collector of Customs and Excise.				
Bolton	..	..	..	..
Bradford	..	..	..	..
Brighton	..	..	..	..
Bristol	..	..	..	..
Cardiff	..	..	..	..
Derby	..	..	..	..
Hull	..	..	..	..
Leeds	..	..	..	..
Leicester	..	..	..	..
Liverpool	..	..	..	..
Manchester	..	..	..	..
Newcastle-on-Tyne	..	..	..	..
Nottingham	..	..	..	..
Portsmouth	..	..	..	..
Sheffield	..	..	..	..
Southampton	..	..	..	..
Sunderland	..	..	..	..
Swansea	..	..	..	..
Wakefield	..	..	..	..
Wolverhampton	..	..	..	..
York	..	..	..	..
Glasgow	..	..	..	..
Belfast	..	..	..	..
Cork	..	..	..	..

The forms I.V.D. (A) and I.V.D. (B) referred to in these Regulations may be obtained at any of the above-mentioned offices, at any local Stamp Office, and at or through any Money Order Office authorised to transact Inland Revenue business.

(3) If the instrument itself be presented the presentation should take place, if possible, after execution *by the transferor or lessor*. The instrument must be accompanied either by a

copy, or by an abstract such (but containing the further particulars required) as is presented with an instrument lodged for adjudication under Section 12 of The Stamp Act, 1891. The abstract should set out fully, for purposes of identification, the description of the property sold or leased, and if the instrument contains or refers to a plan, a copy of such plan should be furnished. A full statement should be made of any easements or reservations affecting the land, of any covenant restricting its use, and of any agreement or obligation to repair, or to pay outgoings. Any covenant or undertaking or liability to discharge any encumbrance, and any covenant or undertaking to erect buildings or to expend any sums upon the property, should be set out in full. If the easement, covenant, &c., is set forth in some other document than the instrument itself, that document should be presented as well. The official form I.V.D. (A) of application for an increment value duty stamp, duly filled up and signed, should also be lodged. The official form of abstract I.V.D. (B) can be used if desired.

(4) The instrument, the abstract, and the form I.V.D. (A), when presented, will be retained by the proper Officer of the Commissioners for examination, a ticket being given, by way of receipt, to the person presenting them.

(5) Assuming that the various documents or papers so presented are found on examination to contain the particulars necessary for the purpose of enabling the Commissioners to assess the duty, and that, if security as hereafter mentioned (Paragraph 14) has been required, such security has been given, the instrument will be impressed with one of the stamps (a), (b), (c) mentioned in Section 4, Sub-section (3), of The Finance (1909-10) Act, 1910, and will be returned on presentation of the ticket after the expiration of the time mentioned therein. The stamps are:—

Either (a) a stamp denoting that the Increment Value Duty has been assessed by the Commissioners and paid in accordance with the assessment :

Or (b) a stamp denoting that all particulars have been delivered to the Commissioners which, in their opinion, are necessary for the purpose of enabling them to assess

the duty, and that security has been given for the payment of duty in any case where the Commissioners have required security :

Or (c) a stamp denoting that upon the occasion in question no increment value duty was payable.

(6) Where an instrument is so stamped it will, notwithstanding any objection relating to Increment Value Duty, be deemed to be *duly stamped* so far as respects that duty. But unless so stamped the instrument cannot, except in criminal proceedings, be given in evidence, or be made available for any purpose whatever.

(7) The Act (Section 4, Sub-section (7)) provides that where any agreement for a transfer, or agreement for a lease, is stamped with one of the special stamps provided, it will not be *necessary* to stamp in a similar manner any conveyance, assignment, or lease made subsequently to and in conformity with the agreement. But, if desired, a corresponding stamp will be impressed on the conveyance, assignment, or lease, on presentation of both instruments at the selected Office. Similarly, a duplicate of any instrument which has been stamped in accordance with the above section will be impressed with a corresponding stamp on both documents being produced at the Office for the purpose.

If, however, an agreement for a transfer is intended to be followed shortly by an actual conveyance, the Commissioners will not require the agreement, or particulars thereof, to be presented under these Regulations, but will accept the presentation in due course of the actual conveyance, or particulars thereof, as a compliance with the provisions of the Act. But an agreement for a lease, or particulars thereof, should be presented without waiting for the actual lease.

(8) The fact that an instrument has been presented under these Regulations, and stamped with the appropriate stamp as regards Increment Value Duty, will not in any way affect the liability of the instrument to the ordinary Stamp Duty imposed by The Stamp Act, 1891, or any amending Act. It will be necessary, therefore, that the instrument, if not drawn on material duly stamped, be

presented within thirty days of execution, to be impressed with the proper ordinary Stamp Duty (Stamp Act, 1891, Section 15). Should, however, the transferor or lessor desire to have this duty impressed at the same time as the stamp for Increment Value Duty, so as to avoid the necessity for a second presentation of the instrument: he should pay the amount of the duty when presenting the instrument. abstract, &c., at the Stamp Office selected.

(9) In the case of instruments lodged at the Head Office in London, Edinburgh. or Dublin, for adjudication under Section 12 of The Stamp Act, 1891, the application for an Increment Value Duty Stamp may be made at the same time. the application form I.V.D. (A) being accompanied by a separate copy or abstract of the instrument. any abstract to contain a full statement as regards easements, covenants, &c. The Increment Value Duty Stamp will then be impressed when the instrument is stamped with the adjudication stamp.

(10) Notwithstanding the exemptions from Increment Value Duty contained in Section 7 (Agricultural Land), Section 8 (Small houses and properties in owner's occupation), and Section 35 (Land held by Rating Authorities), it will be necessary to present to the Commissioners any conveyance on sale, or lease for a term exceeding fourteen years, of land of the description mentioned in those sections, as the instrument will not be duly stamped unless it bears one of the special Increment Value Duty stamps mentioned in Paragraph 5.

Presentation of Particulars.

(11) If the instrument itself be not presented by the transferor or lessor for the purpose of the assessment of Increment Value Duty thereon, *reasonable particulars thereof*, in the form of the various documents mentioned in Paragraph 3. must be furnished by him. Such particulars can be lodged at any of the Offices mentioned in Paragraph 2. and a receipt will be given therefor. The transferor or lessor should at the same time lodge the Form I.V.D. (A) duly filled up.

(12) The presentation of such particulars, in lieu of the instrument itself, will free the transferor or lessor from liability

to the fine imposed by Section 4. Sub-section (2), of The Finance (1909-10) Act, 1910. But the instrument will not be "duly stamped" until it bears, in addition to the ordinary Stamp Duty to which it is liable, one of the special stamps relating to Increment Value Duty mentioned in Paragraph 5. Provided, however, the necessary particulars, as above, have been furnished by the transferor or lessor, the appropriate stamp will be impressed at any future date, if the instrument and the receipt for the particulars are lodged for the requisite length of time at the *Head Office* for England, Scotland, or Ireland, as the case may be.

Presentation at Other Offices.

(13) Where it is not possible or convenient to present the instrument or the required particulars at one of the stamp offices mentioned in Paragraph 2, it will be open to the transferor or lessor to lodge the various documents (including Form A) at the local Stamp Office, or at any Money Order Office authorised to transact Inland Revenue business, with a request that they may be forwarded to the Head Office, in the same way as documents requiring to be stamped with the ordinary Stamp Duties may now be lodged. In such cases the examination of the documents will be made at the Head Office only, where any Increment Value Duty will be assessed, and in due course the conveyance or lease or agreement, stamped as regards such duty, will be returned to the Stamp or Post Office for delivery to the transferor or lessor on his personal application for it.

Payment of Increment Value Duty.

(14) If on the presentation of an instrument, or of particulars thereof, the Commissioners have reason to consider that the occasion is one on which a claim to Increment Value Duty has arisen, they may require security for the payment of duty, and in such a case the stamp referred to in Paragraph 5 will not be impressed until the required security has been given.

(15) On an assessment of Increment Value Duty being made by the Commissioners, notice of such assessment will be given

in writing to the transferor or lessor at the address furnished by him on Form I.V.D. (A), and payment will be required in accordance with the terms of such notice.

(16) In the case of any lease or transfer on sale where the consideration is in the form of a periodical payment, the Commissioners may, if they think fit, allow payment of the Increment Value Duty assessed to be made by instalments in accordance with the following regulations:—

(I.) Where the consideration consists wholly of a periodical payment.

The duty shall be payable by five equal annual instalments, and the first instalment shall fall due one year after the date of the grant of the lease or the transfer of the interest, and the subsequent instalments on the same date in each successive year.

(II.) Where the consideration consists partly of a lump sum payment and partly of a periodical payment,

(a) There shall become due and payable at the date of the transfer or grant of the lease an amount bearing to the whole duty to be collected the same proportion as the lump sum bears to the total present value of the consideration calculated on the four per cent. tables.

(b) The balance shall be payable by instalments of the same amounts and at the same times as if the periodical payment constituted the whole of the consideration, and the balance were the whole of the Increment Value Duty to be collected.

(III.) In any case in which the person liable to the payment of any Increment Value Duty may and does elect to pay such duty by instalments, he shall furnish security to the satisfaction of the Commissioners for the payment of the whole amount of the duty payable.

(IV.) If any person, on being required by the Commissioners to furnish such security, fails to do so within two

months he shall forfeit his right to pay the duty by instalments, and the whole of the duty shall be deemed to be due on the expiration of two months from the date on which notice was given by the Commissioners of their requirement.

(V.) If any instalment remains unpaid for a period of thirty days after it falls due, or if the person liable to the payment dies or becomes bankrupt, the whole balance of the duty unpaid shall forthwith become due and payable.

(VI.) For the purposes of these rules the term "interest in land" shall be deemed to include the "fee simple of the land."

(VII.) Where the duty due on the grant of a lease is payable by instalments, and the lease is determined before all such instalments have fallen due, the instalments which have not fallen due will be remitted, and in that case the amount of duty which, under Section 4 of The Finance (1909-10) Act, 1910, is deemed to have been paid, will be reduced by the amount of the instalment so remitted.

(17) In any case where Increment Duty shall have been paid under the provisions of Section 4 of The Finance (1909-10) Act, 1910, but the transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty will be returned to the transferor or lessor on his making written application to the Commissioners, the application being supported by a statutory declaration setting forth the circumstances under which the repayment is claimed. The application must be made within two years after the payment of the duty. In any case in which arrangements have been made for payment by instalments, the two years will run from the date on which the last instalment was paid.

Correspondence.

(18) Should occasion arise for correspondence in connection with the presentation of an instrument or the delivery of particulars, the letter should be addressed to the Secretary, Inland Revenue,

Somerset House, London, W.C.; or to the Comptroller of Stamps and Taxes, Edinburgh, or to the Comptroller of Stamps and Income Tax, Dublin, as the case may be, the envelope being marked in the left-hand corner "Increment Value Duty."

SCOTLAND.

(19) In Scotland. Paragraphs 1 to 15 of the above Regulations shall not apply to instruments presented for registration in the General Register of Sasines or in any Burgh or other local register, and in lieu thereof the following Regulations shall apply:—

- (i.) *Where an instrument¹ is presented for registration in the General Register of Sasines or in the Burgh or other local register it shall not be necessary for the transferor or lessor or other accountable party to present such instrument to the Commissioners or furnish them with "reasonable particulars" thereof.*
- (ii.) Nothing in these Regulations shall affect the liability of the instrument to the ordinary stamp duty imposed by The Stamp Act, 1891, or any amending Act.
- (iii.) Where the Commissioners have reason to consider that the occasion is one on which a claim to Increment Value Duty has arisen, they may require security for the payment of the duty.
- (iv.) On an assessment of Increment Value Duty being made by the Commissioners, notice of such assessment will be given in writing to the transferor or lessor, and payment will be required in accordance with the terms of such notice.

¹ Observe that (a) "Instrument" means any instrument executed on the occasion of a transfer on sale of land or interest in land or the grant of any lease for a term exceeding fourteen years or any feu of land or the creation of any ground annual; and that (b) the expression "transferor" includes the person by whom or on whose behalf a feu is granted or a ground annual created (see Section 42, Sub-section (3)).

IRELAND.

(20) In view of the special provisions of Section 4. Subsection (5), of The Finance (1909-10) Act, 1910, and of the arrangements and Regulations made thereunder, conveyances on sale of lands *to which the Land Purchase (Ireland) Acts apply* will, on presentation to the Registrar of Titles in the ordinary course, and subject to the provisions contained in Paragraph 14 of these Regulations, be impressed with the appropriate stamp denoting that the necessary particulars have been delivered to the Commissioners.

With the above exception, these Regulations will apply in Ireland to all conveyances on sale and leases exceeding fourteen years.

APPENDIX B.—(1).

Form I.V.D. (A).

FINANCE. (1909-10) ACT, 1910.

INCREMENT VALUE DUTY.

Statement to be furnished on application for one of the Stamps mentioned in Section 4 of The Finance (1909-10) Act, 1910.

NOTE.—The instrument itself (if possible, executed by the transferor or lessor), and also a copy or a sufficient abstract thereof, must accompany this application. If an abstract be furnished, it should contain a full description of the property. A copy of any plan should be furnished. A full statement should be made of any easements or reservations affecting the land, of any covenant restricting its use, and of any agreement or obligation to repair, or to pay outgoings. Any covenant or undertaking, or liability to discharge any incumbrance, and any covenant or undertaking to erect buildings, or to expend any sums upon the property, should be set out in full. If the easement, covenant, &c., is set forth in some other document than the instrument itself, that document should be presented as well. The official form of abstract, I.V.D. (B), can be used if desired.

Date of application

Name and address of Solicitor,
agent or applicant, which
should also be written on the
endorsement of the abstract
or copy before presentation

Name and address of trans-
feror or lessor

Description and date of the instrument	
	} 1st Part
Names of parties to the instrument	} 2nd Part
	} 3rd Part

DECLARATION.¹

I [or we] hereby declare that the particulars given in the copy or abstract are true and correct to the best of my [or our] knowledge and belief.

Signature

NOTE.—It is open to the transferor or lessor, in lieu of presenting the instrument itself to be stamped under Section 4, to present reasonable particulars thereof. The particulars required will be the same as those necessary if the instrument itself is presented. Presentation of particulars will relieve the transferor or lessor from liability to fine; but the stamp, "Particulars Delivered," will not be given unless and until the instrument itself, accompanied by the official receipt for the particulars, is presented for the purpose at the HEAD OFFICE in London, Edinburgh, or Dublin, as the case may be.

¹ To be signed by the transferor or lessor or by his solicitor or agent.

APPENDIX B.—(2).

Form I.V.D. (B).

FINANCE (1909-10) ACT, 1910.

INCREMENT VALUE DUTY.

On the occasion of any transfer on sale of the fee simple of any land or of any interest in land, or on the grant of any lease for a term exceeding fourteen years, the following particulars, as far as they are applicable, are required to be furnished to the Commissioners of Inland Revenue in accordance with the provisions of Section 4 of The Finance (1909-10) Act, 1910.

1. Description of Instrument
presented.

Date of Instrument ...

2. Situation of { Parish or Place
Land { County ...

3. Names, addresses, and
descriptions of parties.

Vendor (or Lessor) ...

Purchaser (or Lessee)

Sub-Purchaser (if any)

4. Consideration.

To be set out in detail with
full particulars of:—

(a) Any Capital payment ...

(b) Any Mortgage or other
debt, and state whether
to be released or
covenanted to be paid.

(c) Any periodical payment
(rent charges, &c.). (See
also No. 14).

-
- (d) Any term surrendered
 - (e) Any land surrendered or exchanged.
 - (f) Covenants
 - (1) To redeem charges
 - (2) To make any outlay on or in respect of the property whether upon buildings or otherwise.
 - (g) Any other consideration, including reference to any lawsuit or dispute compromised, &c.
-

5. Parcels.

The description should be an exact copy from the deed, and should set forth any dimensions given as well as the "General words" relating to the particular appurtenances. In all cases the description here given should, in conjunction with the plan, if any, be sufficient to enable the situation and boundaries of the land to be identified.

(If the space allowed is not sufficient, the description can be given on a separate sheet of paper.)

6. Plan.

Where there is a plan a Copy thereof should be furnished.

7. Exceptions and Reservations.

These should be set out in detail, particularly where minerals, sporting rights, timber, easements, &c., may be reserved.

8. Covenants by the purchaser or lessee to build or improve property, or to form, make, maintain or contribute towards cost of roads, should be recited.

9. Restrictions.

Any restrictions whatever which may be considered to affect the market value of the interest created or transferred should be set out in detail, including :—

(a) Building restrictions ...

(b) Building line—position of.

(c) Any restrictions as to user of premises, *e.g.* a covenant to use for only one trade in the case of business premises, or to use as a private dwelling only in a business neighbourhood, or not to convert into a shop without payment of a fine.

10. Easements, Rights of Common, &c.

These should be referred to where they exist, and all latent defects should be disclosed.

11. Any other Covenant or Condition affecting the value of the interest created or transferred.

12. Names and addresses of Solicitor and Surveyor.

Additional particulars to be furnished on the grant or on an agreement for the grant of any lease for a term exceeding fourteen years, or an assignment thereof.

13. Habendum.

(a) Date of commencement of term.

(b) Term granted

(c) Any powers of renewal or extension.

(d) Any powers to determine

14. Rents.

All rents reserved should be fully stated, also annuities, dower, existing rent-charges, and apportioned rent-charges, peppercorn rents, abated rents or penalties reserved.

15. Lessee's or Transferee's Covenants.

The following Covenants should be recited:—

- (a) To pay outgoings ...
- (b) To repair or maintain property.
- (c) To insure—Who pays premiums, and for what amount are premises insured or to be insured

16. Lessor's or Transferor's Covenants.

Covenants bearing on the following should be recited:—

Payment of outgoings ...

Improvement or maintenance of property.

Insurance—Who pays premiums, and for what amount are premises insured or to be insured

I hereby certify to the correctness of the above statements.

Solicitor to the Transferor or Lessor.

Address _____

_____ day of _____, 191 .

APPENDIX B.—(3).



THE COMMISSIONERS OF
INLAND REVENUE.

REVERSION DUTY.

(FINANCE (1909-10) ACT, 1910.)

ACCOUNT TO BE RENDERED BY THE LESSOR ON THE DETERMINATION OF THE LEASE OF ANY LAND IN RESPECT OF WHICH REVERSION DUTY IS PAYABLE.

(1) Parish or Parishes in which the Land is situated.	
(2) Precise situation of the Land.	
(3) Christian name and Surname and full postal address of the person making the return.	
(4) Term for which the lease was granted.	
(5) Date of commencement of term.	
(6) Date of determination of the lease.	
(7) Amount of yearly rent reserved under the lease.	
(8)—(a) Whether granted for any consideration in money paid by the lessee in addition to the rent reserved, or	(a)

(b) Upon any condition as to the lessee laying out money in building, rebuilding or improvements. If so, give particulars.	(b)
(9) If a new tenancy has been created state— (a) The term. (b) The rent reserved. (c) Any other consideration.	
(10) Estimated total value of the land at the time of the original grant of the lease. This value is to be ascertained on the basis of the rent received and payments made in consideration of the lease. (See Section 13, Sub-section (2))	
(11) Estimated total value of the land at the determination of the lease. (See Section 25. Sub-section (3)).	
(12) Whether any deduction is claimed in respect of (a) Any part of the total value which is attributable to any works executed or expenditure of a capital nature incurred by the lessor during the term of the lease, or	(a)

<p>(b) Any compensation payable by the lessor at the determination of the lease.</p> <p>[Full particulars of any such claims to deduction should be given.]</p>	(b)
<p>(13) Estimated value of the benefit accruing to the lessor by the determination of the lease.</p>	
<p>(14) Nature of interest of the person making the return in the land.</p> <p>(a) Whether freehold, copyhold, or leasehold.</p> <p>(b) If leasehold, term of lease and date of commencement (including where the lease contains a covenant for renewal, the period for which the lease may be renewed).</p> <p>(c) If dependent on life, the present age of the person on whose life the interest is dependent, and if dependent on more than one life, the present age of the youngest of the persons on whose life it is dependent.</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>(15) Whether any exemption or allowance is claimed under Section 14 of the Finance Act. If so, full particulars must be given.</p>	

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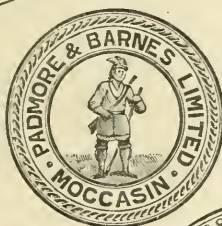


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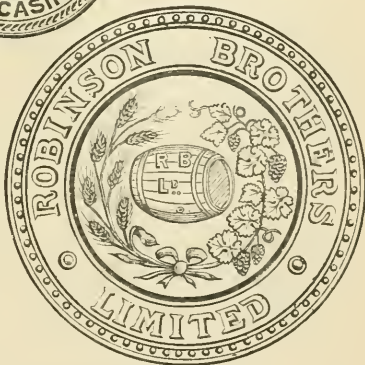
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